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

In the Matter of the Accusation Against: Patrick Yat-Fu Tong, M.D. Physician's & Surgeon's Certificate No: G 76702 Respondent.	Case No.: 800-2020-073148

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the petition for reconsideration, filed by February 16, 2022, and the time for action having expired at 5:00 p.m. on February 28, 2022, the petition is deemed denied by operation of law.

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

In the Matter of the Accusation Against: **Patrick Yat-Fu Tong, M.D.** **Physician's & Surgeon's Certificate No. G 76702** **Respondent.**	**Case No. 800-2020-073148** **ORDER GRANTING STAY** **(Government Code Section 11521)**

Derek F. O'Reilly-Jones, Esq. on behalf of Respondent, Patrick Yat-Fu Tong, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of February 17, 2022, at 5:00 p.m.

Execution is stayed until February 28, 2022, at 5:00 p.m.

This Stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: February 16, 2022

William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Accusation Against: Patrick Yat-Fu Tong, M.D. Physician's and Surgeon's Certificate No. G 76702 Respondent.	Case No. 800-2020-073148

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 17, 2022.

IT IS SO ORDERED January 18, 2022.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, Chair
Panel B

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

In the Matter of the Accusation Against:

PATRICK YAT-FU TONG, M.D.,

Physician's and Surgeon's Certificate No. G 76702

Respondent.

Agency Case No. 800-2020-073148

OAH No. 2021060859

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on December 3, 2021, by videoconference.

Deputy Attorney General Ana Gonzalez represented complainant William Prasifka, Executive Director of the Medical Board of California.

Attorney Derek F. O'Reilly-Jones represented respondent Patrick Yat-Fu Tong, M.D., who was present for the hearing.

The matter was submitted for decision on December 3, 2021.

FACTUAL FINDINGS

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 76702 to respondent Patrick Yat-Fu Tong, M.D., on June 1, 1993. This certificate expired without renewal on June 30, 2021. When it expired, and continuing through the time of the hearing, the certificate was suspended as described below in Finding 13.

2. Acting in his official capacity as Executive Director of the Board, complainant William Prasifka signed an accusation against respondent on May 19, 2021. Respondent requested a hearing.

3. Complainant alleges that the Board should impose discipline against respondent, because of discipline the Maryland State Board of Physicians imposed against him in November 2020 and April 2021, as described more fully in Findings 7 through 10, below. Complainant seeks an order revoking respondent's California certificate, or placing it on probation.

Education and Professional Experience

4. Respondent completed an M.D./Ph.D. program in 1989. After a general medical internship, he completed a residency in ophthalmology in 1993, a clinical fellowship in pediatric ophthalmology in 1994, and a further research fellowship in pediatric ophthalmology in 1995.

5. Between 1995 and 2000, respondent was a post-doctoral fellow in a molecular biology research laboratory, focusing on lysosomal storage disorders. Beginning in 1997 and continuing until 2007, he also served as a clinical assistant professor in a medical school's ophthalmology department.

6. Respondent established a private outpatient pediatric ophthalmology practice in Maryland in 2008. He continued in this private practice until the Maryland State Board of Physicians suspended his authority to practice medicine in Maryland, as described below in Finding 7.

Maryland Disciplinary Action

7. The Maryland State Board of Physicians summarily suspended respondent's authority to practice medicine in Maryland on November 18, 2020. Following a hearing on January 13, 2021, the Maryland State Board of Physicians declined to lift this suspension order.

8. Effective April 6, 2021, upon respondent's consent, the Maryland State Board of Physicians entered a superseding order regarding respondent's Maryland medical practice. This order lifted respondent's total suspension, and placed him on probation for at least six months. During this probation period, the order required respondent to complete "an ethics course addressing ethical issues and human participant protection in human subject research" and to pay a $5,000 fine.

9. The order identified in Finding 8 permitted respondent to apply after six months, and after completing the course and paying the fine, to terminate his probation. Respondent fulfilled these requirements, and the Maryland State Board of Physicians terminated his probation effective October 13, 2021.

10. The Maryland order identified in Finding 8 also permanently prohibits respondent from practicing pediatric ophthalmology in Maryland. As long as respondent continues to hold a Maryland medical license, he must verify every year by affidavit that he did not practice "ophthalmology on pediatric patients age 18 years or less in the past year."

11. The Maryland State Board of Physicians entered the order described in Findings 8 through 10 because respondent had engaged in unprofessional conduct and medical incompetence in his pediatric ophthalmology practice. In summary, respondent had diagnosed amblyopia and strabismus in several children who did not meet diagnostic criteria for these disorders, without documenting his examinations or his diagnostic analyses carefully. He had prescribed medically unnecessary prism eyeglasses and atropine eye drops, which for some patients harmed rather than improved their vision.

12. To the Maryland State Board of Physicians, respondent explained his diagnostic and treatment decisions as reflecting his discovery of "new symptoms associated with any small eye misalignment, in situations where the eyes are not sufficiently misaligned to cause double vision, but sufficiently misaligned to cause symptoms." At the hearing, respondent explained that he is capable of diagnosing subtle eye misalignments that most ophthalmologists do not perceive, and that he has developed better methods for treating such subtle eye misalignments than the methods that most pediatric ophthalmologists use.

Additional Evidence

13. On April 14, 2021, the Board issued an order suspending respondent's California physician's and surgeon's certificate, on the basis of the Maryland order described in Findings 8 through 10.

14. Respondent testified that the Maryland order described above in Findings 8 through 10 is wholly unjust. He believes that the expert reviewers who criticized his patient treatment to the Maryland State Board of Physicians were biased against him, and that their understanding of pediatric ophthalmology is inadequate to

evaluate his innovative methods of diagnosis and treatment. "In every single instance," he explained, "I was right."

15. Respondent also summarized what he had learned from the ethics course he took to satisfy the Maryland order described above in Findings 8 through 10. He said that the main lesson he took away from the course was that using novel, unproven treatments on patients does not constitute unethical experimentation if the physician's motive is to help those patients. He regrets not having given his patients' parents greater explanation of how his treatment methods differed from, and were superior to, other pediatric ophthalmologists' more standard methods; but he views any unprofessionalism as "technical" at worst because he intended primarily to help his patients, not to gather data from them with which to advance his own career.

16. Since November 2020, respondent has completed more than 140 hours of continuing medical education, on topics including ethics in clinical medical research involving human subjects, eye diseases, and eye surgery.

17. Respondent wishes to continue holding his California physician's and surgeon's certificate because he would like to relocate to California (where he has family ties) and resume practicing pediatric ophthalmology. He sees his license restriction in Maryland as a "tragedy," but he hopes to recover from this tragedy in California, where he can "help the world." Respondent suggests that he might join the faculty at the University of California, San Francisco, or at the California Pacific Medical Center, and become the principal investigator on a formal clinical research project to test his theories about diagnosing and treating strabismus and amblyopia. No evidence established that either of these institutions has considered employing respondent, however.

References

18. Pediatric ophthalmologist David Hunter, M.D., Ph.D., testified to support respondent. Dr. Hunter considers respondent an "excellent clinician." He believes that the Maryland State Board of Physicians erred by forbidding respondent to continue practicing pediatric ophthalmology in Maryland.

19. Pediatric ophthalmologist David Guyton, M.D., also testified to support respondent. Dr. Guyton respects respondent's clinical skills, but acknowledges that respondent's "enthusiasm got the best of him" when he began using unconventional techniques to diagnose and treat strabismus and amblyopia. He believes that the Maryland State Board of Physicians erred by forbidding respondent to continue practicing pediatric ophthalmology in Maryland, and that the Board would compound this error by forbidding respondent to practice pediatric ophthalmology in California.

20. Adult ophthalmologist Irene C. Kuo, M.D., also testified to support respondent. Dr. Kuo's children were respondent's patients. She believes he is "one of the best pediatric ophthalmologists on both coasts," and that his practice restriction in Maryland deprives the community of high-quality care.

LEGAL CONCLUSIONS

1. "[R]evocation, suspension, or other discipline, restriction, or limitation" against a medical license respondent holds in another state, on grounds that would have been cause for discipline in California, is cause for discipline against respondent's California physician's and surgeon's certificate. (Bus. & Prof. Code, § 2305.) The out of state disciplinary order itself is "conclusive evidence" of the facts the order states. (*Id.*,

§ 141, subd. (a).) Clear and convincing evidence must prove any additional facts supporting California discipline.

2. The order described in Findings 8 through 10 constitutes a restriction or other limitation on respondent's Maryland medical license. The matters stated in Finding 11 confirm that the Maryland State Board of Physicians restricted respondent's Maryland medical license because of care that did not conform to professional standards for diagnosis and treatment, and because of medical incompetence.

3. Unprofessional conduct, including gross negligence, repeated negligence, and incompetence, is cause for discipline in California. (Bus. & Prof. Code, § 2234, subds. (a)–(d).) The matters stated in Findings 8 through 11 constitute cause for discipline in California against respondent.

4. According to the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines, 12th Edition 2016" (Cal. Code Regs., tit. 16, § 1361, subd. (a)), the Board may revoke a physician's and surgeon's certificate for unprofessional conduct. Alternatively, the Board may place the physician on probation, and may limit the physician's practice (such as by prohibiting ophthalmology practice on pediatric patients) during the probation term.

5. The matters stated in Findings 12 and 14 through 17 demonstrate that if the Board permitted respondent to continue practicing medicine in California, he would continue exactly the same unprofessional conduct that resulted in his Maryland license restriction. Moreover, the matters stated in Findings 14 and 15, specifically, confirm that respondent has no insight into the reasons for his Maryland discipline, and has gained no benefit from the rehabilitative steps Maryland required. Public

safety compels revocation of respondent's California physician's and surgeon's certificate.

ORDER

California Physician's and Surgeon's Certificate No. G 76702, issued to respondent Patrick Yat-Fu Tong, M.D., is revoked.

DATE: 12/16/2021

Juliet E. Cox

JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: **Patrick Yat-Fu Tong, M.D.** **7120 Minstrel Way, Suite 110** **Columbia, MD 21045** **Physician's and Surgeon's Certificate No. G 76702,** Respondent.	Case No. 800-2020-073148 **ACCUSATION**

PARTIES

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

2. On June 1, 1993, the Medical Board issued Physician's and Surgeon's Certificate Number G 76702 to Patrick Yat-Fu Tong, M.D. (Respondent). The Physician's and Surgeon's Certificate was suspended on April 14, 2021, pursuant to Business and Professions Code section 2310, but was in full force and effect at all other times relevant to the charges brought herein and will expire on June 30, 2021, unless renewed.

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

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

6. Section 141 of the Code states:

> (a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.
>
> (b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

CAUSE FOR DISCIPLINE

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

7. On November 18, 2020, the Maryland State Board of Physicians (Maryland Board) ordered Respondent's Maryland license summarily suspended after an investigation into complaints involving pediatric patients, and a conclusion that public health, safety or welfare

required the emergency suspension. On January 13, 2021, the Maryland Board disciplinary panel held a "postdeprivation hearing" to determine if the summary suspension should be maintained or lifted. After the hearing the panel chose to maintain the summary suspension order for patient safety. On April 6, 2021, Respondent entered into a Consent Order with the Maryland Board. The general findings were: Respondent misdiagnosed pediatric patients with visual acuity problems and prescribed medically unnecessary interventions, Respondent had the patients return for frequent office visits to check on the medically unnecessary interventions for years, Respondent's patient records were confusing and deficient in many ways, Respondent used a mathematical "equation" of his own creation to calculate the power of the prisms in the children's glasses, and on one occasion dropped the glasses off in a patient's mailbox after increasing the power because the parent had not picked them up soon enough.

8. The Consent Order's patient specific findings are summarized as follows:

- Respondent diagnosed nine pediatric patients with strabismus and treated them with prism glasses, in the absence of symptoms or clinical indications of the condition;
- Respondent treated asymptomatic patients with prism glasses over long periods of time, often several years and during frequent office visits would increase the prism power to intolerable levels so that patients complained of headaches, double vision or visual discomfort;
- Respondent diagnosed children with amblyopia who did not meet the diagnostic definition;
- Respondent prescribed daily atropine drops to children he wrongly diagnosed with amblyopia and for one patient the treatment caused amblyopia in the aligned eye;
- Respondent advised parents, without medical substantiation, that the prism glasses would help with other non-specific complaints like "moodiness";
- Respondent proposed eye surgery for two of these patients for an eye condition, that he diagnosed, that did not in fact exist.

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9. The discipline imposed included in part the following terms: Respondent was reprimanded, placed on probation for a minimum period of six months, ordered to permanently cease practicing ophthalmology on pediatric patients aged 18 years or less, ordered to complete an ethics course addressing ethical issues and human participant protection in human subject research, and pay a civil fine of $5,000 dollars. A copy of the Maryland Board Summary Suspension Order, Post Deprivation Hearing Order, and Consent Order are attached as Exhibit A.

10. Respondent's conduct and the action of the Maryland Board of Physicians as set forth in paragraph 7-9, above, constitute cause for discipline pursuant to sections 2305 and/or 141 of the Code.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 76702, issued to Patrick Yat-Fu Tong, M.D.;

2. Revoking, suspending or denying approval of Patrick Yat-Fu Tong, M.D. 's authority to supervise physician assistants and advanced practice nurses;

3. Ordering Patrick Yat-Fu Tong, 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: MAY 19 2021

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

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EXHIBIT A

Maryland State Board of Physicians
Order for Summary Suspension of License to Practice Medicine,
Post Deprivation Hearing Order for Summary Suspension,
and
Consent Order

IN THE MATTER OF * BEFORE THE

PATRICK YAT-FU TONG, M.D. * MARYLAND STATE

Respondent * BOARD OF PHYSICIANS

License Number: D47821 * Case Number: 2220-0198A

*

* *

ORDER FOR SUMMARY SUSPENSION OF LICENSE TO PRACTICE MEDICINE

Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") hereby **SUMMARILY SUSPENDS** the license of **Patrick Yat-Fu Tong, M.D.** (the "Respondent"), **License Number D47821**, to practice medicine in the State of Maryland. Panel A takes such action pursuant to its authority under Md. Code Ann., State Gov't § 10-226(c)(2) (2014 Repl. Vol. & 2019 Supp.), having concluded that the public health, safety, or welfare imperatively requires emergency action.

INVESTIGATIVE FINDINGS[1]

Panel A has reasonable cause to believe that the following facts are true:

I. BACKGROUND

1. At all relevant times, the Respondent was and is licensed to practice medicine in the State of Maryland. The Board initially issued the Respondent's Maryland medical license on August 7, 1995, under License Number D47821. His license is active through

[1] The statements about the Respondent's conduct set forth in this document are intended to provide the Respondent with reasonable notice of the basis for this suspension. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with this action.

September 30, 2021. The Respondent holds inactive licenses to practice medicine in California and Missouri.

2. The Respondent is not currently board-certified in any medical specialty. He was board-certified in ophthalmology (general); however, the certification expired on December 31, 2015.

3. The Respondent maintains an office for the practice of ophthalmology in Columbia, Maryland. His letterhead states that his practice includes "Pediatric Ophthalmology, Adult Strabismus, and Hereditary Eye Diseases." He holds privileges at a hospital in Howard County, Maryland.

II. COMPLAINTS

COMPLAINT 1

4. On September 18, 2019, the Board received a written complaint from a parent ("Parent 1") of a former patient ("Patient 1") of the Respondent. The Respondent had treated Patient 1 for eight years, from the age of five to 13 years old.

5. Patient 1 initially presented to the Respondent in 2011, to be examined for possible color-blindness. The Respondent confirmed that Patient 1 was color-blind and also diagnosed Patient 1 with astigmatism.[2] For the latter condition, the Respondent prescribed glasses.

6. In or around 2012, the Respondent diagnosed Patient 1 with amblyopia.

[2] Astigmatism is the result of an irregularly shaped cornea or lens that prevents light from focusing properly on the retina. It causes distorted or blurred vision at any distance.

7. Amblyopia, commonly referred to as "lazy eye," is a disorder of sight in which the brain fails to process inputs from one eye and over time favors the other eye, resulting in decreased vision.

8. Parent 1 alleged that the Respondent advised that Patient 1's right eye was dominant and he would lose his sight in his left eye if the right eye was not patched (occlusion therapy) or treated with atropine drops (atropine penalization) to dilate the eye.

9. Atropine drops weaken the focusing mechanism of the stronger eye, reducing the near vision to such an extent that the child's brain "chooses" the image from the amblyopic eye rather than the blurred image from the stronger eye. The therapeutic goal of atropine penalization is to improve the visual acuity of the amblyopic eye.

10. Parent 1 further alleged that in 2017, the Respondent diagnosed Patient 1 with strabismus.

11. Strabismus, a condition commonly referred to as "cross-eyed," is a problem with eye alignment, in which both eyes do not look at the same place at the same time.

12. The Respondent advised that Patient 1's left eye was now dominant and needed to be corrected because his eyes were not lining up correctly.

13. The Respondent placed prisms in Patient 1's glasses to treat his diagnosis of strabismus.

14. The Respondent increased the prism strength at regular intervals from two prism diopters to 15 prism diopters.

15. Parent 1 alleged that the Respondent was planning to perform surgery on Patient 1's right eye to fix the muscle in place once the prisms corrected his right eye.

16. Parent 1 reported that as the Respondent increased the prism diopters for the last several times, Patient 1 complained of double vision, headaches, and being sick to his stomach. Patient 1 would often remove the prism glasses while doing schoolwork.

17. In or around August 2019, Parent 1 learned from a friend that the Respondent had recommended prisms for her daughter. The friend had sought a second opinion and was told that her daughter did not have the condition diagnosed by the Respondent and did not need prism glasses.

18. Thereafter, Parent 1 sought opinions from two pediatric ophthalmologists, both of whom advised her that Patient 1 should not be wearing prism glasses because the prisms could be damaging his eyes.

19. In her complaint, Parent 1 listed the names of several parents whose children were also treated with prism glasses by the Respondent.

COMPLAINTS 2 – 5

20. In January 2020, the Board received four anonymous complaints, all of which appeared to be filed by ophthalmologists, alleging that the Respondent prescribed medically unnecessary prism glasses to pediatric patients in the absence of clinical indication.

III. THE BOARD INVESTIGATION

21. The Board initiated an investigation of the Respondent's practice regarding pediatric patients. In furtherance of its investigation, the Board requested the Respondent to respond to Parent 1's complaint and conducted under-oath interviews of Parent 1 and two of the individuals mentioned in Parent 1's complaint ("Parent 2" and "Parent 3"). The

Board also subpoenaed from the Respondent the records of 10 pediatric patients ("Patients 1 – 10"), including Patient 1 and the patients named in the anonymous complaints.

22. The Board referred the patient records obtained from the Respondent and related materials to a peer review entity.

23. In addition to responding to the Complaint, the Respondent also provided written responses to the peer review reports.

Parents 2 and 3 Interviews

24. Parent 2 reported that the Respondent, within minutes after the appointment began, told her that her child's ("Child 1's") eyes were "uneven" and that Child 1 needed prism glasses after simply observing Child 1 sitting in a chair. The Respondent told Parent 2 that her child was attempting to correct the unevenness by tilting her head.

25. On the first visit, the Respondent inserted prisms in Child 1's glasses that he had cut from a sheet of plastic. The Respondent instructed Parent 2 that Child 1 was to wear the prism glasses 24 hours a day unless she was sleeping.

26. Parent 2 subsequently sought a second opinion from a pediatric ophthalmologist who advised that Child 1 did not need prism glasses.

27. Parent 3 reported that she did not observe any eye examination equipment in the Respondent's office when she took her child ("Child 2") to be examined. At the initial appointment, the Respondent observed that Child 2 tilted his head to the left. At the next visit, the Respondent applied prisms to Child 2's glasses and told Parent 3 that Child 2 should wear the glasses as much as possible.

28. Parent 3 subsequently sought a second opinion from a vision therapist who advised that Child 2's vision issues were attributable to the need to develop processing skills, not an eye misalignment.

IV. RELEVANT EYE DISORDERS

A. Amblyopia

29. The American Academy of Ophthalmology (the "AAO") describes amblyopia as "an important public health problem because of its prevalence among children and because visual impairment from amblyopia is lifelong and can be profound...With rare exception, amblyopia results in lifelong visual loss if it is untreated or inadequately treated in early childhood." AAO Preferred Practice Pattern ("PPP") Amblyopia, 2017.

30. The AAO PPP further states:

> Treatment of refractive error alone can improve the visual acuity in children who have untreated anisometropic and strabismic amblyopia. Visual acuity of children who have bilateral refractive amblyopia also can substantially improve with refractive correction alone. Additional treatment of patching and atropine drops would not be indicated until amblyopia did not resolve with the treatment of glasses alone.

31. Amblyopia, as determined by the AAO PPP, is a diagnosis based on best corrected vision with more than a two-line or greater difference of optotype between the eyes. In other words, if the difference between the vision in a child's eyes is less than two lines, the child does not have amblyopia.

B. Strabismus

32. If untreated or treated inadequately, strabismus may cause amblyopia.

33. The AAO has advised practitioners that, "Strabismus treatment in children involves glasses, patching or surgery." AAO Summary Benchmarks for PPP Strabismus, 2019.

34. Prism treatment is not standard of quality care in the AAO's recommendations for the treatment of either amblyopia or strabismus for children.

V. THE PEER REVIEW

35. Two peer reviewers ("Peer Reviewers 1 and 2"), who are board-certified in ophthalmology and specialize in pediatric ophthalmology, separately reviewed the ten patient records and submitted their individual reports to the Board.[3]

36. Both Peer Reviewers expressed their concern that the Respondent regularly used prism glasses to treat pediatric asymptomatic patients with minimal objective findings for visual acuity conditions that the Respondent had inappropriately diagnosed using non-standard techniques, in violation of the standard of quality care.

37. For example, and not in limitation, the Respondent diagnosed and treated patients for amblyopia based on his finding that there was a one-line difference between the eyes, not a two-line difference as set forth as the standard of care by the AAO. The Respondent also diagnosed strabismus, that he would then treat with prism glasses, based on his observation of a patient's head tilt. The Respondent perused patients' Facebook postings to confirm his finding of a patient's head tilt.[4]

38. In a letter to the Board, the Respondent elaborated on his belief that head posture, or head tilt, is associated with vertical eye misalignment and that an individual's

[3] Neither of the Peer Reviewers filed the aforementioned anonymous complaints.
[4] Both Peer Reviewers remarked that they found the Respondent's use of Facebook postings to confirm his diagnosis of a head tilt to be unusual and not standard practice.

efforts to fuse images causes somatic health issues such as gastrointestinal distress, moodiness, and stiff necks.

39. In his supplemental response to the Peer Reviewers' reports, the Respondent continued to defend his diagnostic and treatment methods, stating,

> I have uncovered new symptoms associated with any small eye misalignment, in situations where the eyes are not sufficiently misaligned to cause double vision, but sufficiently misaligned to cause symptoms. In a number of these patients, small amounts of prisms results *(sic)* in dramatic improvements.
> ...
> When the head is straight the misalignment is larger (that is precisely the reason why the individual tilts his head to decrease the magnitude of the misalignment). Therefore, if the head is straighter, allowing the angle of misalignment to become larger, the individual would accept or perhaps even welcome the prismatic compensation.

40. The Respondent consistently used a mathematical "equation" of his own creation to determine the power of the prism he gave to the child. The Respondent's equation is not based on clinical measurements. Instead, the equation uses a patient's functional eye height, fusional effort, head tilt, and prismatic compensation. The Respondent's equation consists of variables that cannot be measured; the equation has not been scientifically validated which calls into question its utility and appropriateness as a diagnostic tool.

41. The Respondent consistently failed to appropriately document strabismus using industry-accepted methods of measurements and failed to document adequately physical findings or complaints for which prism treatment would be appropriate.

42. Both Peer Reviewers expressed concern that the Respondent drove to a patient's home (Patient 3) and dropped off in the family's mailbox a pair of prism glasses

in which he had increased the power from 4 to 6 diopters. The mother had not returned to the Respondent's office to pick up the newly adjusted glasses and Patient 3 did not return after the Respondent dropped off the glasses. Both Peer Reviewers expressed concern not only that the Respondent prescribed prism glasses for an asymptomatic patient, but also that the Respondent's delivery of the glasses to the family's mailbox is not consistent with clinically appropriate behavior.

PATIENT-SPECIFIC FINDINGS

43. In addition to the above general findings, the peer reviewers concurred that the Respondent failed to meet the standard of quality care for nine of the ten patients for reasons including, but not limited to:

a. The Respondent diagnosed and treated pediatric patients with prism glasses, in the absence of symptoms or clinical indications of strabismus (Patients 1 -7, 9 – 10). Both Peer Reviewers expressed concern regarding the Respondent's frequent use of unnecessary prism glasses to treat pediatric patients based primarily on subclinical ("flick") findings. The Respondent often merely documented "head tilt" or left hypertropia with no numeric documentation of the degree of head tilt, or the amount of deviation in prism diopters (Patients 1 – 7, 9 – 10). Ophthalmologists do not diagnose or treat eye disorders based on head tilt alone;

b. The Respondent treated asymptomatic patients with prism glasses over a long period of time, often several years. The Respondent "urged" patients to wear the prism glasses full time and during frequent office visits regularly increased the

power of the prisms to unreasonable and often intolerable levels.[5] Patients complained of headaches, double vision or visual discomfort;

c. The Respondent diagnosed children with amblyopia who did not meet that diagnostic definition (Patients 1, 3, 7, and 10);

d. The Respondent's prescription of daily atropine drops to treat children whom he wrongly diagnosed with amblyopia is unnecessary and overly aggressive. In one instance (Patient 1), the treatment caused amblyopia in the aligned eye ("reverse amblyopia").

e. The Respondent advised parents, without medical substantiation, that using prism glasses will help ameliorate non-specific complaints including "moodiness," neck stiffness and gastrointestinal distress (Patients 2, 3, 6, and 10);

f. The Respondent proposed to perform eye surgery on two patients (Patients 1 and 2), both of whom were asymptomatic and did not require the prism glasses the Respondent had ordered them to wear, much less surgery for an eye problem that did not exist. Eye surgery for strabismus is based on prism measurements which the Respondent failed to perform.

BASIS FOR SUMMARY SUSPENSION

A child who wears prism glasses must force their eyes to overcome the double image the prism induces. The use of prism glasses on a pediatric patient who does not have strabismus has the potential of causing harm and long-term

[5] Adults would find it difficult to tolerate two prism diopters. The Respondent had prescribed prisms up to 15 prism diopters to his pediatric patients. Although a child's brain is developing, if forced to wear unnecessary prisms, the brain can adapt, but only to a point. Some of the patients wore prism glasses as ordered by the Respondent until they could not tolerate the magnitude of image displacement, ultimately refusing to wear the glasses.

damage, including intractable double vision, amblyopia, possible loss of fusion (depth perception), and possible development of strabismus that would require surgery to correct. In addition, forcing the eyes to pull the two images together constantly while wearing the prism glasses causes severe physical strain on the eyes, headaches, and general discomfort, as reported by many of the children whose care was reviewed.

CONCLUSION OF LAW

Based on the foregoing Investigative Findings, Panel A concludes that the public health, safety or welfare imperatively require emergency action in this case, pursuant to Md. Code Ann., State Gov't § 10-226(c)(2) (2014 Repl. Vol. & 2019 Supp.) and Md. Code Regs. 10.32.02.08B(7)(a).

ORDER

Based on the foregoing Investigative Findings and Conclusion of Law, it is, by a majority of a quorum of Panel A, hereby

ORDERED that, pursuant to the authority vested in the Board by Md. Code Ann., State Gov't § 10-226(c)(2) and Md. Code Regs. 10.32.02.08B(7)(a), the license of **PATRICK YAT-FU TONG, M.D.**, License Number D47821, to practice medicine in the State of Maryland is **SUMMARILY SUSPENDED**; and it is further

ORDERED that a post-deprivation summary suspension hearing in accordance with Md. Code Regs. 10.32.02.08E has been scheduled for **Wednesday, December 2, 2020, at 11:45 a.m.** before Disciplinary Panel A at the Maryland State Board of Physicians, 4201 Patterson Avenue, Baltimore, Maryland 21215; and it is further

ORDERED that at the conclusion of the post-deprivation summary suspension hearing held before Panel A, the Respondent, if dissatisfied with the result of the hearing, may request within ten (10) days an evidentiary hearing, such hearing to be held within thirty (30) days of the request before an Administrative Law Judge at the Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland 21031; and it is further

ORDERED that this Order for Summary Suspension is an Order of Panel A and, as such, is a **PUBLIC DOCUMENT**. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Md. Code Ann., Gen. Prov. § 4-333(b)(6).

11/18/2020
Date

Signature on File

Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

I HEREBY ATTEST AND CERTIFY UNDER
PENALTY OF PERJURY ON 12/29/2020
THAT THE FORGOING DOCUMENT IS A
FULL, TRUE AND CORRECT COPY OF
THE ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY.

Christine A. Farrelly
EXECUTIVE DIRECTOR
MARYLAND BOARD OF PHYSICIANS

Maryland
DEPARTMENT OF HEALTH

Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

January 14, 2021

Patrick Yat-Fu Tong, M.D.

Daniel C. Costello, Esq.
Wharton, Levin, Ehrmantraut & Klein, PA
104 West Street
Annapolis, Maryland 21401
dcc@wlekn.com

Victoria Pepper, Assistant Attorney General
Office of the Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201

Re: Patrick Yat-Fu Tong, M.D.
Case No.: 2220-0198
License No.: D47821

Dear Dr. Tong, Mr. Costello, and Ms. Pepper:

On November 18, 2020, Disciplinary Panel A of the Maryland State Board of Physicians issued an **ORDER FOR SUMMARY SUSPENSION** in this case, pursuant to Md. Code Ann., State Gov't, § 10-226(c)(2)(i) (2014 Repl. Vol. & 2019 Supp.).

Pursuant to the Order, on January 13, 2021, Disciplinary Panel A held a postdeprivation hearing to show cause why that suspension should not be continued. Dr. Tong, and his counsel, Daniel C. Costello, Esq. attended the hearing on that date. The State was represented by Victoria Pepper, Assistant Attorney General, Administrative Prosecutor. Both parties presented oral arguments at the hearing.

After considering these arguments at the hearing and the investigative file, Disciplinary Panel A determined that it would continue the summary suspension imposed on November 18, 2020. Disciplinary Panel A thus will not lift the summary suspension order. Disciplinary Panel A finds that the public health, safety or welfare imperatively requires the suspension of Dr. Tong's

license. *See* State Gov't, § 10-226(c)(2)(i). The order of summary suspension is thus reaffirmed and continues. *See* COMAR 10.32.02.08H(1).

NOTICE OF RIGHT TO APPEAL

Under the Board regulations, Dr. Tong has the right to request a full evidentiary hearing before an Administrative Law Judge at the Office of Administrative Hearings. To receive the evidentiary hearing, Dr. Tong or his counsel must file the request for the hearing within **TEN (10)** days of the date of this letter. The request for a hearing should be sent to Christine Farrelly, Executive Director, at the Board's address. If the hearing is timely requested, the regulations require that an Administrative Law Judge set the hearing to begin within 30 days of the request, *see* COMAR 10.32.02.08I, though that 30-day time period may be waived.

This letter constitutes an order of the Board through Disciplinary Panel A resulting from formal disciplinary action and is therefore a public document.

Sincerely yours,

Signature on File

Christine A. Farrelly, Executive Director
Maryland State Board of Physicians

IN THE MATTER OF	*	**BEFORE THE**
PATRICK YAT-FU TONG, M.D.	*	**MARYLAND STATE**
Respondent	*	**BOARD OF PHYSICIANS**
License Number: D47821		**Case Number: 2220-0198A**

* * * * * * * * * * * * *

CONSENT ORDER

On December 8, 2020, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **Patrick Yat-Fu Tong**, M.D. (the "Respondent") License Number D47821, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-401 *et seq.* (2014 Repl. Vol. & 2019 Supp.).

The pertinent provisions of the Act under H.O. § 14-404(a) provide as follows:

> **§ 14-404. Denials, reprimands, probations, suspensions, and revocations – Grounds.**
>
> (a) *In general.* Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
>
> ...
>
> (3) Is guilty of:
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> ...
>
> (ii) Unprofessional conduct in the practice of medicine;
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> (4) Is professionally, physically, or mentally incompetent;
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> ...
>
> (19) Grossly overutilizes health care services;
>
> ...
>
> (22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State;

...

(40) Fails to keep adequate medical records as determined by appropriate peer review[.]

On February 10, 2021, Panel A was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of the DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Panel A finds:

I. BACKGROUND

1. At all relevant times, the Respondent was and is licensed to practice medicine in the State of Maryland. The Board initially issued the Respondent's Maryland medical license on August 7, 1995, under License Number D47821. His license is active through September 30, 2021. The Respondent holds inactive licenses to practice medicine in California and Missouri.

2. The Respondent is not currently board-certified in any medical specialty. He was board-certified in ophthalmology (general); however, the certification expired on December 31, 2015.

3. The Respondent maintains an office for the practice of ophthalmology in Columbia, Maryland. His letterhead states that his practice includes "Pediatric Ophthalmology, Adult Strabismus, and Hereditary Eye Diseases." He holds privileges at a hospital in Howard County, Maryland.

II. COMPLAINTS

COMPLAINT 1

4. On September 18, 2019, the Board received a written complaint from a parent ("Parent 1") of a former patient ("Patient 1") of the Respondent. The Respondent had treated Patient 1 for eight years, from the age of five to 13 years old.

5. Patient 1 initially presented to the Respondent in 2011, to be examined for possible color-blindness. The Respondent confirmed that Patient 1 was color-blind and also diagnosed Patient 1 with astigmatism.[1] For the latter condition, the Respondent prescribed glasses.

6. In or around 2012, the Respondent diagnosed Patient 1 with amblyopia.

7. Amblyopia, commonly referred to as "lazy eye," is a disorder of sight in which the brain fails to process inputs from one eye and over time favors the other eye, resulting in decreased vision.

8. Parent 1 alleged that the Respondent advised that Patient 1's right eye was dominant and he would lose his sight in his left eye if the right eye was not patched (occlusion therapy) or treated with atropine drops (atropine penalization) to dilate the eye.

9. Atropine drops weaken the focusing mechanism of the stronger eye, reducing the near vision to such an extent that the child's brain "chooses" the image from the amblyopic eye rather than the blurred image from the stronger eye. The therapeutic goal of atropine penalization is to improve the visual acuity of the amblyopic eye.

[1] Astigmatism is the result of an irregularly shaped cornea or lens that prevents light from focusing properly on the retina. It causes distorted or blurred vision at any distance.

10. Parent 1 further alleged that in 2017, the Respondent diagnosed Patient 1 with strabismus.

11. Strabismus, a condition commonly referred to as "cross-eyed," is a problem with eye alignment, in which both eyes do not look at the same place at the same time.

12. The Respondent advised that Patient 1's left eye was now dominant and needed to be corrected because his eyes were not lining up correctly.

13. The Respondent placed prisms in Patient 1's glasses to treat his diagnosis of strabismus.

14. The Respondent increased the prism strength at regular intervals from two prism diopters to 15 prism diopters.

15. Parent 1 alleged that the Respondent was planning to perform surgery on Patient 1's right eye to fix the muscle in place once the prisms corrected his right eye.

16. Parent 1 reported that as the Respondent increased the prism diopters for the last several times, Patient I complained of double vision, headaches, and being sick to his stomach. Patient 1 would often remove the prism glasses while doing schoolwork.

17. In or around August 2019, Parent 1 learned from a friend that the Respondent had recommended prisms for her daughter. The friend had sought a second opinion and was told that her daughter did not have the condition diagnosed by the Respondent and did not need prism glasses.

18. Thereafter, Parent 1 sought opinions from two pediatric ophthalmologists, both of whom advised her that Patient I should not be wearing prism glasses because the prisms could be damaging his eyes.

19. In her complaint, Parent 1 listed the names of several parents whose children were also treated with prism glasses by the Respondent.

COMPLAINTS 2 – 5

20. In January 2020, the Board received four anonymous complaints, all of which appeared to be filed by ophthalmologists, alleging that the Respondent prescribed medically unnecessary prism glasses to pediatric patients in the absence of clinical indication.

III. THE BOARD INVESTIGATION

21. The Board initiated an investigation of the Respondent's practice regarding pediatric patients. In furtherance of its investigation, the Board requested the Respondent to respond to Parent 1's complaint and conducted under-oath interviews of Parent 1 and two of the individuals mentioned in Parent 1's complaint ("Parent 2" and "Parent 3"). The Board also subpoenaed from the Respondent the records of 10 pediatric patients ("Patients 1 – 10"), including Patient 1 and the patients named in the anonymous complaints.

22. The Board referred the patient records obtained from the Respondent and related materials to a peer review entity.

23. In addition to responding to the Complaint, the Respondent also provided written responses to the peer review reports.

Parents 2 and 3 Interviews

24. Parent 2 reported that the Respondent, within minutes after the appointment began, told her that her child's ("Child 1's") eyes were "uneven" and that Child 1 needed prism glasses after simply observing Child 1 sitting in a chair. The Respondent told Parent 2 that her child was attempting to correct the unevenness by tilting her head.

25. On the first visit, the Respondent inserted prisms in Child 1's glasses that he had cut from a sheet of plastic. The Respondent instructed Parent 2 that Child 1 was to wear the prism glasses 24 hours a day unless she was sleeping.

26. Parent 2 subsequently sought a second opinion from a pediatric ophthalmologist who advised that Child 1 did not need prism glasses.

27. Parent 3 reported that she did not observe any eye examination equipment in the Respondent's office when she took her child ("Child 2") to be examined. At the initial appointment, the Respondent observed that Child 2 tilted his head to the left. At the next visit, the Respondent applied prisms to Child 2's glasses and told Parent 3 that Child 2 should wear the glasses as much as possible.

28. Parent 3 subsequently sought a second opinion from a vision therapist who advised that Child 2's vision issues were attributable to the need to develop processing skills, not an eye misalignment.

IV. RELEVANT EYE DISORDERS

A. Amblyopia

29. The American Academy of Ophthalmology (the "AAO") describes amblyopia as "an important public health problem because of its prevalence among children and because visual impairment from amblyopia is lifelong and can be profound...With rare exception, amblyopia results in lifelong visual loss if it is untreated or inadequately treated in early childhood." AAO Preferred Practice Pattern ("PPP") Amblyopia, 2017.

30. The AAO PPP further states:

> Treatment of refractive error alone can improve the visual acuity in children who have untreated anisometropic and strabismic amblyopia. Visual acuity of children who have bilateral refractive amblyopia also can substantially improve with refractive correction alone.

31. Amblyopia, as determined by the AAO PPP, is a diagnosis based on best corrected vision with more than a two-line or greater difference of optotype between the eyes. In other words, if the difference between the vision in a child's eyes is less than two lines, the child does not have amblyopia.

B. Strabismus

32. If untreated or treated inadequately, strabismus may cause amblyopia.

33. The AAO has advised practitioners that: "When ocular disease is present, a treatment and management plan should be established, which may involve observation, eyeglasses, topical or systemic medications, occlusion therapy, eye exercises, and/or surgical procedures." AAO Preferred Practice Pattern ("PPP") Pediatric Eye Evaluations, 2017.

34. Prism treatment is not standard of quality care in the AAO's recommendations for the treatment of either amblyopia or strabismus for children.

V. THE PEER REVIEW

A. Health Occ. §14-404(a)(22) – Failure to Meet the Standard of Quality Care

35. Two peer reviewers ("Peer Reviewers 1 and 2"), who are board-certified in ophthalmology and specialize in pediatric ophthalmology, separately reviewed the ten patient records and submitted their individual reports to the Board.[2]

[2] Neither of the Peer Reviewers filed the aforementioned anonymous complaints.

36. Both Peer Reviewers expressed their concern that the Respondent regularly used prism glasses to treat pediatric asymptomatic patients with minimal objective findings for visual acuity conditions that the Respondent had inappropriately diagnosed using non-standard techniques, in violation of the standard of quality care.

37. For example, and not in limitation, the Respondent diagnosed and treated patients for amblyopia based on his finding that there was a one-line difference between the eyes, not a two-line difference as set forth as the standard of care by the AAO. The Respondent also diagnosed strabismus, that he would then treat with prism glasses, based on his observation of a patient's head tilt. The Respondent perused patients' Facebook postings to confirm his finding of a patient's head tilt.[3]

38. In a letter to the Board, the Respondent elaborated on his belief that head posture, or head tilt, is associated with vertical eye misalignment and that an individual's efforts to fuse images causes somatic health issues such as gastrointestinal distress, moodiness, and stiff necks.

39. In his supplemental response to the Peer Reviewers' reports, the Respondent continued to defend his diagnostic and treatment methods, stating,

> I have uncovered new symptoms associated with any small eye misalignment, in situations where the eyes are not sufficiently misaligned to cause double vision, but sufficiently misaligned to cause symptoms. In a number of these patients, small amounts of prisms results *(sic)* in dramatic improvements.
>
> ...
>
> When the head is straight the misalignment is larger (that is precisely the reason why the individual tilts his head to decrease the magnitude of the misalignment). Therefore, if the head is straighter, allowing the angle of

[3] Both Peer Reviewers remarked that they found the Respondent's use of Facebook postings to confirm his diagnosis of a head tilt to be unusual and not standard practice.

misalignment to become larger, the individual would accept or perhaps even welcome the prismatic compensation.

40. The Respondent consistently used a mathematical "equation" of his own creation to determine the power of the prism he gave to the child. The Respondent's equation is not based on clinical measurements. Instead, the equation uses a patient's functional eye height, fusional effort, head tilt, and prismatic compensation. The Respondent's equation consists of variables that cannot be measured; the equation has not been scientifically validated which calls into question its utility and appropriateness as a diagnostic tool.

41. The Respondent consistently failed to appropriately document strabismus using industry-accepted methods of measurements and failed to document adequately physical findings or complaints for which prism treatment would be appropriate.

42. Both Peer Reviewers expressed concern that the Respondent drove to a patient's home (Patient 3) and dropped off in the family's mailbox a pair of prism glasses in which he had increased the power from 4 to 6 diopters. The mother had not returned to the Respondent's office to pick up the newly adjusted glasses and Patient 3 did not return after the Respondent dropped off the glasses. Both Peer Reviewers expressed concern not only that the Respondent prescribed prism glasses for an asymptomatic patient, but also that the Respondent's delivery of the glasses to the family's mailbox is not consistent with clinically appropriate behavior.

PATIENT-SPECIFIC FINDINGS

43. In addition to the above general findings, the peer reviewers concurred that the Respondent failed to meet the standard of quality care for nine of the ten patients for reasons including, but not limited to:

a. The Respondent diagnosed and treated pediatric patients with prism glasses, in the absence of symptoms or clinical indications of strabismus (Patients 1 -7, 9 – 10). Both Peer Reviewers expressed concern regarding the Respondent's frequent use of unnecessary prism glasses to treat pediatric patients based primarily on subclinical ("flick") findings. The Respondent often merely documented "head tilt" or left hypertropia with no numeric documentation of the degree of head tilt, or the amount of deviation in prism diopters Patients 1 – 7, 9 – 10). Ophthalmologists do not diagnose or treat eye disorders based on head tilt alone;

b. The Respondent treated asymptomatic patients with prism glasses over a long period of time, often several years. The Respondent "urged" patients to wear the prism glasses full time and during frequent office visits regularly increased the power of the prisms to unreasonable and often intolerable levels.[4] Patients complained of headaches, double vision or visual discomfort;

c. The Respondent diagnosed children with amblyopia who did not meet that diagnostic definition (Patients 1, 3, 7, and 10);

[4] Adults would find it difficult to tolerate two prism diopters. The Respondent had prescribed prisms up to 15 prism diopters to his pediatric patients. Although a child's brain is developing, if forced to wear unnecessary prisms, the brain can adapt, but only to a point. Some of the patients wore prism glasses as ordered by the Respondent until they could not tolerate the magnitude of image displacement, ultimately refusing to wear the glasses.

d. The Respondent's prescription of daily atropine drops to treat children whom he wrongly diagnosed with amblyopia is unnecessary and overly aggressive. In one instance (Patient 1), the treatment caused amblyopia in the aligned eye ("reverse amblyopia");

e. The Respondent advised parents, without medical substantiation, that using prism glasses will help ameliorate non-specific complaints including "moodiness," neck stiffness and gastrointestinal distress (Patients 2, 3, 6, and 10);

f. The Respondent proposed to perform eye surgery on two patients (Patients 1 and 2), both of whom were asymptomatic and did not require the prism glasses the Respondent had ordered them to wear, much less surgery for an eye problem that did not exist. Eye surgery for strabismus is based on prism measurements which the Respondent failed to perform.

B. Health Occ. §14-404(a)(19) – Grossly Overutilizes Health Care Services

44. The Respondent misdiagnosed pediatric patients with visual acuity conditions for which he prescribed medically unnecessary prism glasses.

45. The Respondent directed pediatric patients to return for frequent office visits to check the medically unnecessary prism glasses, often every four to six weeks for years. The Respondent billed for the unnecessary office visits.

C. Health Occ. § 14-404(a)(40) – Fails to Keep Adequate Medical Records

46. The Respondent's documentation in patients' records, while lengthy, contains confusing and non-standard verbiage. The Respondent's medical documentation is deficient for reasons including, but not limited to, the following:

a. The Respondent typically failed to document the standard sensory-motor examination that is used by ophthalmologists to document the exact amount of ocular misalignment;

b. The Respondent's "equation" by which he determined the need for a child to be prescribed prism glasses contains variables that cannot be measured. The Respondent failed to document how he derived the variables he used in his equations. His equation has not been scientifically validated which calls into question its utility and appropriateness as a diagnostic tool;

c. The Respondent failed to document strabismus or symptoms such as double vision that would justify the use of prism glasses in a pediatric patient;

d. The Respondent failed to document the medical justification for increasing the power of the prisms in the patients' prism glasses;

e. The Respondent failed to document a long-term treatment plan for his patients, other than increasing the power of the prisms.

VI. Additional Violations of The Maryland Medical Practice Act

Health Occ. §14-404(a)(3)(ii) – Is Guilty of Unprofessional Conduct in the practice of medicine

47. For reasons including, but not limited to, those set forth above, the Respondent's practice of prescribing medically unnecessary and unjustified prism glasses to pediatric patients for misdiagnosed visual acuity issues constitutes unprofessional conduct in the practice of medicine.

Health Occ. §14-404(a)(4) – Is Professionally, Physically, or Mentally Incompetent

48. For the reasons including, but not limited to those set forth above, the Respondent's practice of prescribing medically unnecessary and unjustified prism glasses to pediatric patients for misdiagnosed visual acuity issues constitutes, in whole or in part, professional incompetence. A child who wears prism glasses must force their eyes to overcome the double image the prism induces. The use of prism glasses on a pediatric patient who does not have strabismus has the potential of causing harm and long-term damage, including intractable double vision, amblyopia, possible loss of fusion (depth perception), and possible development of strabismus that would require surgery to correct. In addition, forcing the eyes to pull the two images together constantly while wearing the prism glasses causes severe physical strain on the eyes, headaches, and general discomfort, as reported by many of the children whose care was reviewed.

The Respondent proposed to perform eye surgery on two of the patients (Patients 1 and 2), both of whom were asymptomatic and did not require the prism glasses the Respondent had ordered them to wear, much less surgery for an eye problem that did not exist.

CONCLUSIONS OF LAW

Based on the Findings of Fact, Disciplinary Panel A concludes that the Respondent violated Health Occ. §14-404(a)(3)(ii) - Is guilty of unprofessional conduct in the practice of medicine; § 14-403(a)(4) - Is professionally, physically, or mentally incompetent; § 14-403(a)(19) - Grossly overutilizes health care services; § 14-403(a)(22) - Fails to meet

appropriate standards as determined by peer review for the delivery of quality medical and surgical performed in an outpatient surgical facility, office, hospital, or any other location in this State; and § 14-403(a)(40) - Fails to keep adequate medical records as determined by appropriate peer review.

ORDER

It is, by an affirmative vote of a majority of a quorum of Disciplinary Panel A, hereby:

ORDERED that the Respondent's Order for Summary Suspension of License to Practice Medicine dated November 18, 2020, and reaffirmed on January 14, 2021, is **TERMINATED AS MOOT**; and it is further

ORDERED that the Respondent is **REPRIMANDED**; and it is further

ORDERED that the Respondent shall **PERMANENTLY CEASE** the practice of ophthalmology on pediatric patients aged 18 years or less; and it is further

ORDERED that on every January 31st thereafter if the Respondent holds a Maryland medical license, the Respondent shall provide the Board with an affidavit verifying that the Respondent has not practiced ophthalmology on pediatric patients age 18 years or less in the past year; and it is further

ORDERED that if the Respondent fails to provide the required annual verification of compliance with this condition:

(1) there is a presumption that the Respondent has violated the permanent condition; and

(2) the alleged violation will be adjudicated pursuant to the procedures of a Show Cause Hearing; and it is further

ORDERED that the Respondent is placed on **PROBATION** for a minimum of **SIX (6) MONTHS.**[5] During probation, the Respondent shall comply with the following terms and conditions of probation:

1. The Respondent is required to take an ethics course addressing ethical issues and human participant protection in human subject research ("HSR"). The following terms apply:

   (a) it is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;

   (b) the disciplinary panel will accept a course taken in-person or over the internet during the state of emergency;

   (c) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;

   (d) the course may not be used to fulfill the continuing medical education credits required for license renewal;

   (e) the Respondent is responsible for the cost of the course.

2. The Respondent shall pay a civil fine of **FIVE THOUSAND DOLLARS ($5,000.00).** The Payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not renew or reinstate the Respondent's license if the Respondent fails to timely pay the fine to the Board.

3. The Respondent shall not apply for early termination of probation; and it is further

[5] If the respondent's license expires during the period of probation, the probation and any conditions will be tolled.

ORDERED that after the Respondent has fully and satisfactorily complied with all terms and conditions of probation, and the minimum period of probation imposed by the Consent Order has passed, the Respondent may submit a written petition for termination of probation. After consideration of the petition, the probation may be terminated through an order of a disciplinary panel. The Respondent may be required to appear before the disciplinary panel to discuss his petition for termination. The disciplinary panel may grant the petition to terminate the probation, through an order of the disciplinary panel, if the Respondent has successfully complied with all of the probationary terms and conditions and if there are no pending complaints related to the charges; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term or condition imposed by this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If the disciplinary panel determines there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings followed by an exceptions process before a disciplinary panel; and if the disciplinary panel determines there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice medicine in Maryland. The disciplinary panel may, in

addition to one or more of the sanctions set forth above, impose a civil monetary fine on the Respondent; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that the effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board or her designee. The Executive Director signs the Consent Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a public document. See Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

Signature on File

04/06/2021
Date

Christine A. Farrelly, Executive Director
Maryland State Board of Physician

CONSENT

I, Patrick Yat-Fu Tong, M.D., acknowledge that I have consulted with counsel before signing this document.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 et seq. concerning the pending charges. I waive this right and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

I sign this Consent Order, without reservation, and fully understand the language and meaning of its terms.

Signature on File

03-30-2021
Date

Patrick Yat-Fu Tong, M.D.
Respondent

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF BALTIMORE

I HEREBY CERTIFY that on this 30th day of MARCH 2021, before me, a Notary Public of the foregoing State and City/County, personally appeared Patrick Yat-Fu Tong, M.D., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Notary Public

My Commission expires: 03-29-2024

ZACHARY S REISFELD
Notary Public
Baltimore County
Maryland
My Commission Expires 3-29-2024