

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

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

Robert Alan Shumway, M.D.

**Physician's and Surgeon's
Certificate No. G 75694**

Respondent.

Case No. 800-2019-061638

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 27, 2023.

IT IS SO ORDERED September 27, 2023.

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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8 *Attorneys for Complainant*

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

12
13 In the Matter of the Accusation Against:

14 **ROBERT ALAN SHUMWAY, M.D.**
15 **8929 UNIVERSITY CENTER LN, SUITE**
208
SAN DIEGO CA 92122-1006

16 **9834 Genesee Ave., Ste. 225**
17 **La Jolla, CA 92037**

18 **Physician's and Surgeon's Certificate**
19 **No. G 75694**

20 Respondent.

Case No. 800-2019-061638

OAH No. 2022090670

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

24 **PARTIES**

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

2. Respondent Robert Alan Shumway, M.D. (Respondent) is represented in this proceeding by attorney Derek F. O'Reilly-Jones, Esq., whose address is: 355 South Grand Ave., Ste. 1750, Los Angeles, CA 90071-1562.

3. On or about December 7, 1992, the Board issued Physician's and Surgeon's Certificate No. G 75694 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. 800-2019-061638, and will expire on August 31, 2024, unless renewed.

JURISDICTION

4. On August 31, 2022, Accusation No. 800-2019-061638 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 or about August 31, 2022. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2019-061638 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2019-061638. Respondent has also carefully read, fully discussed with his counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

7. 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.

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

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1 CULPABILITY

2 9. Respondent does not contest that, at an administrative hearing, Complainant could
3 establish a *prima facie* case with respect to the charges and allegations contained in First
4 Amended Accusation No. 800-2019-061638, a copy of which is attached hereto as Exhibit A, and
5 that he has thereby subjected his Physician's and Surgeon's Certificate No. G 75694 to
6 disciplinary action.

7 10. Respondent agrees that if an accusation is ever filed against him before the Medical
8 Board of California, all of the charges and allegations contained in First Amended Accusation
9 No. 800-2019-061638 shall be deemed true, correct, and fully admitted by Respondent for
10 purposes of that proceeding or any other licensing proceeding involving Respondent in the State
11 of California.

12 11. Respondent agrees that his Physician's and Surgeon's Certificate No. G 75694 is
13 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
14 in the Disciplinary Order below.

15 CONTINGENCY

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

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13. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2019-061638 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

ADDITIONAL PROVISIONS

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

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

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

DISCIPLINARY ORDER

1. PUBLIC REPRIMAND.

IT IS HEREBY ORDERED that Respondent Robert Allan Shumway, M.D., holder of Physician's and Surgeon's Certificate No. G 74694, shall be and hereby is Publicly Reprimanded pursuant to Business and Professions Code section 2227. This Public Reprimand, which is issued in connection with the allegation as set forth in Accusation No. 800-2019-061638, is as follows:

In 2019, Respondent utilized a complete release of liability form regarding his care and treatment of Patient A, as more fully described in Accusation No. 800-2019-061638.

1. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, including, but not limited to, expert review, amended accusations, legal reviews, and investigation(s), in the amount of \$20,053.50 (twenty thousand fifty-three dollars and fifty cents). Costs shall be payable to the

1 Medical Board of California. Failure to pay such costs shall be considered a violation of
2 probation.

3 Payment must be made in full within 30 calendar days of the effective date of the Order, or
4 by a payment plan approved by the Medical Board of California. Any and all requests for a
5 payment plan shall be submitted in writing by respondent to the Board. Failure to comply with
6 the payment plan shall be considered a violation of probation.

7 The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to
8 repay investigation and enforcement costs.

9 2. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
10 a new license or certification, or petition for reinstatement of a license, by any other health care
11 licensing action agency in the State of California, all of the charges and allegations contained in
12 First Amended Accusation No. 800-2019-061638 shall be deemed to be true, correct, and
13 admitted by Respondent for the purpose of any Statement of Issues or any other proceeding
14 seeking to deny or restrict license.

15 3. FAILURE TO COMPLY. Any failure by Respondent to comply with terms and
16 conditions of the Stipulated Settlement and Disciplinary Order set forth above shall constitute
17 unprofessional conduct and grounds for further disciplinary action.

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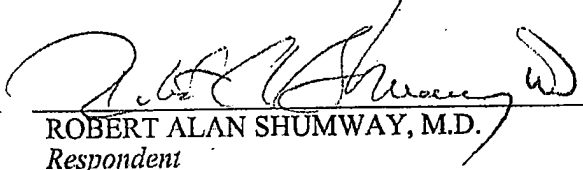
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Derek F. O'Reilly-Jones, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and fully agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

6-6-23


ROBERT ALAN SHUMWAY, M.D.
Respondent

I have read and fully discussed with Respondent Robert Alan Shumway, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

06/06/2023


DEREK F. O'REILLY-JONES, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

DATED: 6/07/2023

Respectfully submitted,

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



JASON J. AHN
Deputy Attorney General
Attorneys for Complainant

SD2022801376

1 ROB BONTA
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Supervising Deputy Attorney General
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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. 800-2019-061638

15 **ROBERT ALAN SHUMWAY, M.D.**
16 **8929 University Center Ln.,**
Suite 208
17 **San Diego CA 92122-1006**

ACCUSATION

18 **Physician's and Surgeon's**
Certificate No. G 75694,

19 Respondent.

20
21 **PARTIES**
22

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

26 2. On or about December 7, 1992, the Medical Board issued Physician's and Surgeon's
27 Certificate No. G 75694 to Robert Alan Shumway, M.D. (Respondent). The Physician's and
28

1 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
2 herein and will expire on August 31, 2024, unless renewed.

3 JURISDICTION

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

7 4. Section 2227 of the Code states:

8 (a) A licensee whose matter has been heard by an administrative law judge of
9 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
10 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:

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

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

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

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

18 (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.

19 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
20 medical review or advisory conferences, professional competency examinations,
21 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.

22 5. Section 2234 of the Code, states:

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

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

27 (b) Gross negligence.

28 (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

1 separate and distinct departure from the applicable standard of care shall constitute
2 repeated negligent acts.

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

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

11 "..."

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

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

20 COST RECOVERY

21 8. Section 125.3 of the Code states:

22 (a) Except as otherwise provided by law, in any order issued in resolution of a
23 disciplinary proceeding before any board within the department or before the
24 Osteopathic Medical Board, upon request of the entity bringing the proceeding, the
25 administrative law judge may direct a licensee found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the
27 investigation and enforcement of the case.

28 (b) In the case of a disciplined licensee that is a corporation or a partnership, the
order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where
actual costs are not available, signed by the entity bringing the proceeding or its
designated representative shall be prima facie evidence of reasonable costs of
investigation and prosecution of the case. The costs shall include the amount of
investigative and enforcement costs up to the date of the hearing, including, but not
limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount
of reasonable costs of investigation and prosecution of the case when requested
pursuant to subdivision (a). The finding of the administrative law judge with regard to
costs shall not be reviewable by the board to increase the cost award. The board may

1 reduce or eliminate the cost award, or remand to the administrative law judge if the
2 proposed decision fails to make a finding on costs requested pursuant to subdivision
(a).

3 (e) If an order for recovery of costs is made and timely payment is not made as
4 directed in the board's decision, the board may enforce the order for repayment in any
appropriate court. This right of enforcement shall be in addition to any other rights
the board may have as to any licensee to pay costs.

5 (f) In any action for recovery of costs, proof of the board's decision shall be
6 conclusive proof of the validity of the order of payment and the terms for payment.

7 (g) (1) Except as provided in paragraph (2), the board shall not renew or
8 reinstate the license of any licensee who has failed to pay all of the costs ordered
under this section.

9 (2) Notwithstanding paragraph (1), the board may, in its discretion,
10 conditionally renew or reinstate for a maximum of one year the license of any
licensee who demonstrates financial hardship and who enters into a formal agreement
with the board to reimburse the board within that one-year period for the unpaid
11 costs.

12 (h) All costs recovered under this section shall be considered a reimbursement
for costs incurred and shall be deposited in the fund of the board recovering the costs
to be available upon appropriation by the Legislature.

13 (i) Nothing in this section shall preclude a board from including the recovery of
14 the costs of investigation and enforcement of a case in any stipulated settlement.

15 (j) This section does not apply to any board if a specific statutory provision in
16 that board's licensing act provides for recovery of costs in an administrative
disciplinary proceeding.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Gross Negligence)**

19 9. Respondent has subjected his Physician's and Surgeon's Certificate No. G 75694 to
20 disciplinary action under sections 2227 and 2234, subdivision (b), of the Code, in that he
21 committed gross negligence in his care and treatment of Patient A,¹ as more particularly alleged
22 hereinafter:

23 10. On or about October 10, 2019, Respondent and Patient A signed a "Complete and
24 Unconditional Liability Release," related to a laser facial procedure Respondent was scheduled to
25 perform on Patient A, on October 15, 2019, which among other things, created a release of
26 Respondent's liability from future care, including post-operative care and/or treatment to be

27 _____
28 ¹ The patient herein is identified as Patient A in order to maintain patient confidentiality.

1 provided to Patient A.

2 11. On or about October 15, 2019, Patient A presented to Respondent for a laser
3 resurfacing procedure.² According to the medical records, Respondent had ordered and/or had
4 planned to administer versed,³ ketamine,⁴ and propofol⁵ to Patient A. At approximately 15:19,
5 2.5 mg of Versed was administered and another 2.5 m of Versed at approximately 15:27. At
6 approximately 15:33, Patient A was administered 50 mg of ketamine. At approximately 15:35,
7 Patient A was administered 0.2 mg of glycopyrrolate,⁶ 50 mg of lidocaine⁷ at approximately
8 15:37 and another 0.2 mg of glycopyrrolate at approximately 15:39. At approximately 15:56,
9 Emergency Medical Services (EMS) were called, due to depressed O2 saturation.⁸

10 At approximately 16:08, EMS arrived. Upon arrival, K.S., M.D. decided to attempt
11 endotracheal intubation⁹ at the scene. However, neither of the laryngoscope¹⁰ handles at
12 Respondent's facility had functioning light sources. Patient A was intubated, using equipment
13 from EMS, and emergently transported to Scripps Emergency Department, where she was in
14

15 ² Laser resurfacing is a facial rejuvenation procedure that uses a laser to improve the
16 skin's appearance or treat minor facial flaws.

17 ³ Versed (Midazolam) is a sedative which can help patients feel relaxed or sleep before
18 surgery or medical procedures.

19 ⁴ Ketamine is an anesthetic, used to induce a loss of consciousness and relieve pain.

20 ⁵ Propofol is a drug that causes loss of consciousness for general anesthesia in major
21 surgery.

22 ⁶ Glycopyrrolate is a medication which decreases stomach acid and saliva production by
23 blocking the activity of a certain natural substance in the body.

24 ⁷ Lidocaine can be used to treat irregular heartbeats. It can also relieve pain and numb the
25 skin.

26 ⁸ Oxygen saturation measures how much oxygen is carried by the hemoglobin in your
27 blood.

28 ⁹ Endotracheal intubation is a medical procedure in which a tube is placed into the
windpipe (trachea) through the mouth or nose.

¹⁰ Laryngoscope is a thin tube with a light, lens, and a video camera that helps providers
closely examine the patient's larynx.

1 critical condition and required substantial life-saving intervention, including ECMO.¹¹ Patient A
2 was eventually discharged from the hospital and placed on antibiotics to manage aspirating
3 pneumonia.¹²

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

6 (a) Respondent failed to have appropriate and/or functioning airway
7 management equipment and/or resuscitation equipment at his facility.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Repeated Negligent Acts)**

10 13. Respondent has further subjected his Physician's and Surgeon's Certificate No. G
11 75694 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
12 subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and
13 treatment of Patient A, as more particularly alleged herein.

14 14. Respondent committed repeated negligent acts in his care and treatment of Patient A,
15 which included, but was not limited to, the following:

16 (a) Paragraphs 9 through 12, above, are hereby incorporated by reference
17 and realleged as if fully set forth herein;

18 (b) Respondent failed to have appropriate and/or functioning airway
19 management equipment and/or resuscitation equipment at his facility; and

20 (c) Respondent utilized a pre-release of liability, releasing liability from
21 future care including post-operative care and/or treatment.

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26 ¹¹ Extracorporeal membrane oxygenation (ECMO) is a treatment that uses a pump to
27 circulate blood through an artificial lung back into the bloodstream.

28 ¹² Aspiration pneumonia occurs when food or liquid is breathed into the airways or lungs,
instead of being swallowed.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(General Unprofessional Conduct)**

3 15. Respondent has further subjected his Physician's and Surgeon's Certificate No. G
4 71070 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in
5 conduct which breaches the rules or ethical code of the medical profession, or conduct which is
6 unbecoming of a member in good standing of the medical profession, and which demonstrates an
7 unfitness to practice medicine, as more particularly alleged in paragraphs 9 through 14, above,
8 which are hereby incorporated by reference as if fully set forth herein.

9 **DISCIPLINARY CONSIDERATIONS**

10 16. To determine the degree of discipline, if any, to be imposed on Respondent Robert
11 Alan Shumway, M.D., Complainant alleges that on or about March 28, 2018, in a prior
12 disciplinary action titled In the Matter of the Accusation Against Robert Alan Shumway, M.D.
13 before the Medical Board of California, in Case Number 800-2016-019734, Respondent was
14 publicly reprimanded, pursuant to Business and Professions Code section 2227, in that
15 Respondent disseminated, and/or caused to be disseminated, and/or allowed to be disseminated,
16 false and/or misleading advertising on his website, regarding board certifications. Respondent
17 was ordered to serve forty (40) hours of community service and complete forty (40) hours of
18 education courses. That decision is now final and is incorporated by reference as if fully set forth
19 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. G 75694, issued
5 to Respondent Robert Alan Shumway, M.D.;

6 2. Revoking, suspending or denying approval of Respondent Robert Alan Shumway,
7 M.D.'s authority to supervise physician assistants and advanced practice nurses;

8 3. Ordering Respondent Robert Alan Shumway, M.D., to pay the Board the costs of the
9 investigation and enforcement of this case, and if placed on probation, the costs of probation
10 monitoring; and

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

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13 DATED: AUG 31 2022



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

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