

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

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

Wesley Edward Kinzie, M.D.

**Physician's and Surgeon's
Certificate No. G 48580**

Respondent.

Case No.: 800-2020-068666

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 March 14, 2024.

IT IS SO ORDERED: February 13, 2024.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 LYNETTE D. HECKER
Deputy Attorney General
4 State Bar No. 182198
California Department of Justice
5 2550 Mariposa Mall, Room 5090
Fresno, CA 93721
6 Telephone: (559) 705-2320
Facsimile: (559) 445-5106
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **WESLEY EDWARD KINZIE, M.D.**
14 **1401 Spanos Court, Suite 101**
15 **Modesto, CA 95355**

16 **Physician's and Surgeon's Certificate No. G**
48580

17 Respondent.

Case No. 800-2020-068666

OAH No. 2023050987

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Medical Board of California of the Department of Consumer
21 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
22 which will be submitted to the Board for approval and adoption as the final disposition of the
23 Accusation.

24 **PARTIES**

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

2. Respondent Wesley Edward Kinzie, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, Esq., whose address is: 5440 Trabuco Road Irvine, CA 92620.

3. On or about August 9, 1982, the Board issued Physician's and Surgeon's Certificate No. G 48580 to Wesley Edward Kinzie, M.D. (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. 800-2020-068666, and will expire on May 31, 2024, unless renewed.

JURISDICTION

4. Accusation No. 800-2020-068666 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 March 28, 2023. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2020-068666 is attached as "Exhibit A" and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2020-068666. Respondent has also carefully read, fully discussed with his counsel, and 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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10. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case or factual basis with respect to the charges and allegations in Accusation No. 800-2020-068666, that he has thereby subjected his Physician's and Surgeon's Certificate, No. G 48580 to disciplinary action, and Respondent hereby gives up his right to contest those charges.

RESERVATION

CONTINGENCY

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1 Chief Executive Officer at every hospital where privileges or membership are extended to
2 Respondent, at any other facility where Respondent engages in the practice of medicine,
3 including all physician and *locum tenens* registries or other similar agencies, and to the Chief
4 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
5 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
6 calendar days.

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

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

11 3. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
12 ordered to reimburse the Board its costs of investigation and enforcement, including, but not
13 limited to, expert review, amended accusations, legal reviews, investigation(s), and subpoena
14 enforcement, as applicable, in the amount of \$22,607.20 (twenty-two thousand, six hundred seven
15 dollars and twenty cents). Costs shall be payable to the Medical Board of California. Failure to
16 pay such costs shall be considered a violation of probation.

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

21 The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to
22 repay investigation and enforcement costs, including expert review costs (if applicable).

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

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

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1 5. GENERAL PROBATION REQUIREMENTS.

2 Compliance with Probation Unit

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

4 Address Changes

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

10 Place of Practice

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

14 License Renewal

15 Respondent shall maintain a current and renewed California physician's and surgeon's
16 license.

17 Travel or Residence Outside California

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

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

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

27 7. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
28 its designee in writing within 15 calendar days of any periods of non-practice lasting more than

1 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
2 defined as any period of time Respondent is not practicing medicine as defined in Business and
3 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
4 patient care, clinical activity or teaching, or other activity as approved by the Board. If
5 Respondent resides in California and is considered to be in non-practice, Respondent shall
6 comply with all terms and conditions of probation. All time spent in an intensive training
7 program which has been approved by the Board or its designee shall not be considered non-
8 practice and does not relieve Respondent from complying with all the terms and conditions of
9 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
10 on probation with the medical licensing authority of that state or jurisdiction shall not be
11 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
12 period of non-practice.

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

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

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

20 Periods of non-practice for a Respondent residing outside of California will relieve
21 Respondent of the responsibility to comply with the probationary terms and conditions with the
22 exception of this condition and the following terms and conditions of probation: Obey All Laws;
23 General Probation Requirements; and Quarterly Declarations.

24 8. COMPLETION OF PROBATION. Respondent shall comply with all financial
25 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
26 completion of probation. This term does not include cost recovery, which is due within 30
27 calendar days of the effective date of the Order, or by a payment plan approved by the Medical
28 Board and timely satisfied. Upon successful completion of probation, Respondent's certificate

1 shall be fully restored.

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

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

19 11. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
20 with probation monitoring each and every year of probation, as designated by the Board, which
21 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
22 California and delivered to the Board or its designee no later than January 31 of each calendar
23 year.

24 12. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
25 a new license or certification, or petition for reinstatement of a license, by any other health care
26 licensing action agency in the State of California, all of the charges and allegations contained in
27 Accusation No. 800-2020-068666 shall be deemed to be true, correct, and admitted by
28 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or

1 restrict license.

2 ACCEPTANCE

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
4 discussed it with my attorney, Raymond J. McMahon, Esq. I understand the stipulation and the
5 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
6 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
7 bound by the Decision and Order of the Medical Board of California.

8
9 DATED: 12/6/23 Wesley Edward Kinzie M.D.
10 WESLEY EDWARD KINZIE, M.D.
Respondent

11 I have read and fully discussed with Respondent Wesley Edward Kinzie, M.D. the terms
12 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
13 Order. I approve its form and content.

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15 DATED: December 6, 2023

Raymond J. McMahon
16 RAYMOND J. MCMAHON, 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: 12/07/2023

Respectfully submitted,

ROB BONTA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General



LYNETTE D. HECKER
Deputy Attorney General
Attorneys for Complainant

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1 ROB BONTA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 LYNETTE D. HECKER
Deputy Attorney General
4 State Bar No. 182198
California Department of Justice
5 2550 Mariposa Mall, Room 5090
Fresno, CA 93721
6 Telephone: (559) 705-2320
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2020-068666

13 **Wesley Edward Kinzie, M.D.**
14 **1401 Spanos Court, Suite 101**
Modesto, CA 95355

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. G 48580,**

17 Respondent.

18
19 **PARTIES**

20 1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as
21 the Interim Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about August 9, 1982, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G 48580 to Wesley Edward Kinzie, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on May 31, 2024, unless renewed.

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4. Section 2227 of the Code states:

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

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

(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.

STATUTORY PROVISIONS

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

(b) Gross negligence.

• • • •

1 **COST RECOVERY**

2 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **FACTUAL ALLEGATIONS**

9 7. Patient A¹ was a 72-year-old male with a history of anxiety, intervertebral disc
10 degeneration, lumbago, shoulder pain, and osteoarthritis of both knees, but who had had right
11 knee pain for several months as of the time he began seeing Respondent on or about March 27,
12 2018. Patient A's left knee was not symptomatic at that time.

13 8. At their first visit, Respondent provided an injection into Patient A's right knee and
14 recommended an MRI if it did not improve after the injection. On or about April 17, 2018,
15 Respondent saw Patient A again and ordered an MRI as his exam and pain had not improved.

16 9. On or about May 17, 2018, Respondent saw Patient A and reviewed the MRI results,
17 which showed arthritis and degenerative meniscal tearing in his right knee. Respondent provided
18 another injection into Patient A's right knee, with a plan to consider arthroscopic surgery on
19 Patient A's right knee if it did not improve.

20 10. On or about June 5, 2018, Respondent saw Patient A to follow up on the right knee
21 pain, at which time the patient's pain was much improved. Respondent documented
22 improvement and a plan to repeat injections every six months.

23 11. On or about November 13, 2018, Patient A returned to Respondent for right-knee
24 pain and popping that bothered him when walking. Respondent requested pre-operative clearance
25 from Patient A's primary care provider and initiated requests for necessary authorizations to
26 perform surgery on the patient's right knee.

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28 ¹ The patient's name is redacted to protect the patient's privacy.

1 12. On or about December 21, 2018, Patient A presented to the hospital for Respondent
2 to perform arthroscopic surgery on his right knee.

3 13. Patient A was taken to the preoperative preparation room and seen by a nurse. A
4 mark was made on Patient A's right knee (the correct knee) to indicate the body part to be
5 operated on by the surgeon.

6 14. Respondent entered the room and confirmed that he would be performing surgery on
7 Patient A's right knee and marked it with his initials. Patient A was then taken to the operating
8 room.

9 15. Respondent scrubbed his hands, entered the operating room, and put on his gown and
10 gloves. The nursing staff had already scrubbed the patient and started the draping process on
11 Patient A's left knee -- which was incorrect. The surgical team, of which Respondent was a part,
12 performed a surgical pause, or timeout, but no one recognized that it was Patient A's incorrect
13 (left) knee that had been prepared and draped for the surgery.

14 16. Everyone on the surgical team read off the Operating Room Safety Board, "Right
15 knee to be done." Respondent was holding Patient A's left (incorrect) leg when this was done.

16 17. Respondent noticed that the surgical tower was set up on the wrong side of the
17 patient, and staff paused and moved the tower for a left-side surgery.

18 18. Post-surgery, Patient A realized that his left knee was bandaged and informed nurses
19 that the surgery had been performed on the wrong knee. The marks made before surgery were
20 still visible on Patient A's right knee.

21 19. Patient A spoke to a hospital supervisor and to Respondent, both of whom stated that
22 the right-knee procedure would be performed free of charge once Patient A had recovered from
23 the errant surgery on his left knee.

24 20. Following the errant surgery, Patient A experienced significant pain and
25 complications with his left knee. Patient A had right knee pain prior to the surgery on or about
26 December 21, 2018, but did not previously have left knee symptoms. After the surgery, Patient A
27 saw a different orthopedic surgeon for the new symptoms with his left knee. An MRI of Patient

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1 A's left knee revealed an issue that required a total knee arthroscopy, which ultimately took place
2 on or about December 11, 2019.

3 21. Patient A has no plans to reattempt the surgery on his right knee.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Gross Negligence)**

6 22. Respondent has subjected his Physician's and Surgeon's Certificate No. G 48580 to
7 disciplinary action under 2227, as defined by section 2234, subdivision (b), of the Code in that he
8 committed act(s) constituting gross negligence. Specifically, Respondent did not appropriately
9 verify the correct surgical site just prior to making an incision in Patient A and performed surgery
10 on the patient's incorrect (left) knee. The circumstances are set forth in Paragraphs 7 through 21,
11 and are incorporated herein by reference as if fully set forth. Additional circumstance are as
12 follows:

13 23. The standard of care requires a timeout, which is the surgical team's short pause just
14 before the incision to confirm that the correct procedure is about to be performed on the correct
15 body part of the correct patient. The standard of care also dictates that a physician is duty-bound
16 both to perform this surgical timeout just prior to making an incision and to confirm the
17 appropriate side or body part with that indicated on the patient's surgical consent.

18 24. Respondent saw the patient just prior to surgery in the preoperative area. Respondent
19 correctly initialed the patient's correct (right) knee. A surgical pause or timeout was performed
20 just prior to the skin incision; however, none of the surgical team nor Respondent realized the
21 patient's wrong (left) knee was prepped. Respondent assisted in placing the final drapes and even
22 noticed that the arthroscopic tower was on the wrong side of the room and still did not notice that
23 he was about to do surgery on the patient's incorrect (left) knee. Respondent failed to verify that
24 he was about to operate on the patient's correct (right) knee and thereafter performed surgery on
25 the patient's incorrect (left) knee which constitutes gross negligence.

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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 48580, issued to Respondent, Wesley Edward Kinzie, M.D.;
2. Revoking, suspending or denying approval of Respondent, Wesley Edward Kinzie, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Respondent, Wesley Edward Kinzie, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: **MAR 28 2023**


REJI VARGHESE
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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