

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

In the Matter of the Accusation Against:

Kenneth Randell Grossman, M.D.

**Physician's & Surgeon's
Certificate No. G 50711**

Respondent.

Case No. 800-2020-065454


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 May 09, 2024.

IT IS SO ORDERED: April 08, 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
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9 **BEFORE THE**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 **KENNETH RANDELL GROSSMAN, M.D.**
15 **580 Collins Dr.**
Merced, CA 95348
16 **Physician's and Surgeon's Certificate No. G**
50711

17 Respondent.
18

Case No. 800-2020-065454

OAH No. 2023050760

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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.

1 **CULPABILITY**

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2020-065454, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate.

5 10. Respondent does not contest that, at an administrative hearing, Complainant could
6 establish a *prima facie* case or factual basis with respect to the charges and allegations in
7 Accusation No. 800-2020-065454, that he has thereby subjected his Physician's and Surgeon's
8 Certificate, No. G 50711 to disciplinary action, and Respondent hereby gives up his right to
9 contest those charges.

10 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
11 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
12 Disciplinary Order below.

13 **RESERVATION**

14 12. The admissions made by Respondent herein are only for the purposes of this
15 proceeding, or any other proceedings in which the Medical Board of California or other
16 professional licensing agency is involved, and shall not be admissible in any other criminal or
17 civil proceeding.

18 **CONTINGENCY**

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

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Respondent, KENNETH RANDELL GROSSMAN, M.D., Physician's and Surgeon's Certificate No. G 50711, shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand is issued in connection with Respondent's care and treatment of one patient, as set forth in Accusation No. 800-2020-065454, and Respondent is reprimanded as follows: you failed to participate in a pre-surgical timeout which resulted in your performing surgery on the wrong eye, and you failed to adequately document slit lamp findings.

B. EDUCATION COURSE

Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours. The educational program(s) or course(s) shall be aimed at patient safety training and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

C. MEDICAL RECORD KEEPING COURSE

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent

1 shall provide the approved course provider with any information and documents that the approved
2 course provider may deem pertinent. Respondent shall participate in and successfully complete
3 the classroom component of the course not later than six (6) months after Respondent's initial
4 enrollment. Respondent shall successfully complete any other component of the course within
5 one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense
6 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
7 licensure.

8 A medical record keeping course taken after the acts that gave rise to the charges in the
9 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
10 or its designee, be accepted towards the fulfillment of this condition if the course would have
11 been approved by the Board or its designee had the course been taken after the effective date of
12 this Decision.

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

16 **D. INVESTIGATION/ENFORCEMENT COST RECOVERY**

17 Respondent is hereby ordered to reimburse the Board its costs of investigation and
18 enforcement, including, but not limited to, expert review, amended accusations, legal reviews,
19 investigation(s), and subpoena enforcement, as applicable, in the amount of \$20,000 (twenty
20 thousand dollars). Costs shall be payable to the Medical Board of California. Failure to pay such
21 costs shall be considered a violation of this stipulated order.

22 Payment must be made in full within 30 calendar days of the effective date of the Order, or
23 by a payment plan approved by the Medical Board of California. Any and all requests for a
24 payment plan shall be submitted in writing by respondent to the Board. Failure to comply with
25 the payment plan shall constitute unprofessional conduct and is grounds for further disciplinary
26 action.

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

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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: 11/10/2023

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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11 In the Matter of the Accusation Against:

Case No. 800-2020-065454

12 **Kenneth Randell Grossman, M.D.**
13 **580 Collins Dr.**
Merced, CA 95348

A C C U S A T I O N

14 **Physician's and Surgeon's Certificate**
15 **No. G 50711,**

16 Respondent.

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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 July 18, 1983, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G 50711 to Kenneth Randell Grossman, M.D. (Respondent). The Physician's
25 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on July 31, 2023, unless renewed.

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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 2004 of the Code states:

The board shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

(f) Approving undergraduate and graduate medical education programs.

(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

(h) Issuing licenses and certificates under the board's jurisdiction.

(i) Administering the board's continuing medical education program.

5. Section 2220 of the Code states:

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, including those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders, and the board shall have all the powers granted in this chapter for these purposes including, but not limited to:

(a) Investigating complaints from the public, from other licensees, from health care facilities, or from the board that a physician and surgeon may be guilty of unprofessional conduct. The board shall investigate the circumstances underlying a report received pursuant to Section 805 or 805.01 within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to Section 805 and Section 805.01.

(b) Investigating the circumstances of practice of any physician and surgeon where there have been any judgments, settlements, or arbitration awards requiring the physician and surgeon or his or her professional liability insurer to pay an amount in

1 damages in excess of a cumulative total of thirty thousand dollars (\$30,000) with
2 respect to any claim that injury or damage was proximately caused by the physician's
3 and surgeon's error, negligence, or omission.

4 (c) Investigating the nature and causes of injuries from cases which shall be
5 reported of a high number of judgments, settlements, or arbitration awards against a
6 physician and surgeon.

7 STATUTORY PROVISIONS

8 6. Section 2234 of the Code, states:

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

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

14 (b) Gross negligence.

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

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

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

27 (d) Incompetence.

28 (e) The commission of any act involving dishonesty or corruption that is
substantially related to the qualifications, functions, or duties of a physician and
surgeon.

(f) Any action or conduct that would have warranted the denial of a certificate.

(g) The failure by a certificate holder, in the absence of good cause, to attend
and participate in an interview by the board. This subdivision shall only apply to a
certificate holder who is the subject of an investigation by the board.

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

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1 **COST RECOVERY**

2 8. 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 9. On or about February 28, 2020, Respondent performed a penetrating keratoplasty
10 (full thickness corneal transplant) on Patient A.¹ The surgery was to be performed on the right
11 eye, but Respondent inadvertently performed the surgery on the left eye, which did not need a
12 cornea transplant.

13 10. The informed consent, pre-operative orders, and surgery schedule correctly identified
14 the right eye as the operative eye. The right eye was marked in the pre-operative area by a nurse.
15 Patient A was brought into the operating room and the right eye was prepped with Betadine
16 solution by the circulating nurse. However, the left eye was draped by the surgical technician. A
17 surgical timeout was conducted by the operating room team and identified the right eye as the
18 operative eye. Respondent was not present in the operating room for the surgical timeout.
19 Respondent then performed the penetrating keratoplasty on the draped left eye. At the conclusion
20 of the case, after Respondent removed the drapes, he saw the mark on the right eye and
21 immediately knew he had operated on the incorrect eye. Unfortunately, the mark had not been
22 visible under the opaque surgical paper drape. Respondent immediately informed Patient A's
23 family of the error.

24 11. The majority of Respondent's post-operative notes between February 28, 2020, and
25 February 16, 2021, do not describe or comment on slit lamp findings regarding the penetrating
26 keratoplasty graft in the left eye.

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 12. Respondent Kenneth Randell Grossman, M.D. is subject to disciplinary action under
4 section 2234, subdivision (c), in that he committed repeated acts of negligence in his care and
5 treatment of Patient A. The circumstances are set forth in paragraphs 9 through 11, above, which
6 are incorporated here by reference as if fully set forth. Additional circumstances are as follows:

7 13. The standard of care is for a surgeon to personally participate in a surgical timeout,
8 wherein the patient and procedure are verified by the operating room team in order to confirm the
9 surgical plan, particularly in procedures involving laterality where wrong site surgery is possible.
10 Respondent's failure to personally participate in the surgical timeout immediately prior to Patient
11 A's surgery constitutes negligence.

12 14. The standard of care is to document accurate notes that describe physical examination
13 findings. Respondent's failure to document slit lamp findings describing the penetrating
14 keratoplasty graft in Patient A's left eye constitutes negligence.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Failure to Maintain Adequate and Accurate Records)**

17 15. Respondent Kenneth Randell Grossman, M.D. is subject to disciplinary action under
18 section 2266, in that he failed to maintain adequate and accurate records of his care and treatment
19 of Patient A. The circumstances are set forth in paragraphs 9 through 14, above which are
20 incorporated here by reference as if fully set forth.

21 **PRAYER**

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


24 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 50711,
25 issued to Kenneth Randell Grossman, M.D.;

26 2. Revoking, suspending or denying approval of Kenneth Randell Grossman, M.D.'s
27 authority to supervise physician assistants and advanced practice nurses;
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1 3. Ordering Kenneth Randell Grossman, M.D., to pay the Board the costs of the
2 investigation and enforcement of this case, and if placed on probation, the costs of probation
3 monitoring;

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

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6 DATED: MAR 02 2023



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

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