

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

In the Matter of the Accusation  
Against:

Duk Hwan Kim, M.D.

Physician's and Surgeon's  
Certificate No. A 78546

Respondent.

Case No. 800-2018-048671

**DECISION**

The attached Stipulated Surrender of License and 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 September 22, 2020.

IT IS SO ORDERED September 15, 2020.

MEDICAL BOARD OF CALIFORNIA

By:   
William Prasifka  
Executive Director

1 XAVIER BECERRA  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
3 BRIAN ROBERTS  
Deputy Attorney General  
4 State Bar No. 282868  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
6 Telephone: (213) 269-6614  
Facsimile: (916) 731-2117  
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:

Case No. 800-2018-048671

13 **DUK HWAN KIM, M.D.**  
14 800 Leonard Street  
Montebello, CA 90640

OAH No. 2019090150

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

15 **Physician's and Surgeon's Certificate No. A**  
16 **78546,**

17 Respondent.

18  
19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Christine J. Lally (Complainant) is the Executive Director of the Medical Board of  
23 California (Board). She brought this action solely in her official capacity and is represented in  
24 this matter by Xavier Becerra, Attorney General of the State of California, by Brian Roberts,  
25 Deputy Attorney General.

26 ///

27 ///

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1 2. DUK HWAN KIM, M.D. (Respondent) is represented in this proceeding by attorney  
2 Fredrick M. Ray, Esq., whose address is: 5000 Birch Street, Suite 7000, Newport Beach, CA  
3 92660-2127.

4 3. On or about April 5, 2002, the Board issued Physician's and Surgeon's Certificate No.  
5 A 78546 to DUK HWAN KIM, M.D. (Respondent). The Physician's and Surgeon's Certificate  
6 was in full force and effect at all times relevant to the charges brought in Accusation No. 800-  
7 2018-048671 and will expire on April 30, 2020, unless renewed.

8 JURISDICTION

9 4. Accusation No. 800-2018-048671 was filed before the Board, and is currently  
10 pending against Respondent. The Accusation and all other statutorily required documents were  
11 properly served on Respondent on August 13, 2019. Respondent timely filed his Notice of  
12 Defense contesting the Accusation. A copy of Accusation No. 800-2018-048671 is attached as  
13 Exhibit A and incorporated by reference.

14 ADVISEMENT AND WAIVERS

15 5. Respondent has carefully read, fully discussed with counsel, and understands the  
16 charges and allegations in Accusation No. 800-2018-048671. Respondent also has carefully read,  
17 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License  
18 and Order.

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

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

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1 CULPABILITY

2 8. Respondent understands that the charges and allegations in Accusation No. 800-2018-  
3 048671, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and  
4 Surgeon's Certificate.

5 9. For the purpose of resolving the Accusation without the expense and uncertainty of  
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a prima  
7 facie case for the charges in the Accusation and that those charges constitute cause for discipline.  
8 Respondent hereby gives up his right to contest that cause for discipline exists based on those  
9 charges.

10 10. Respondent understands that by signing this stipulation he enables the Board to issue  
11 an order accepting the surrender of his Physician's and Surgeon's Certificate without further  
12 process.

13 RESERVATION

14 11. 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 12. This stipulation shall be subject to approval by the Board. Respondent understands  
20 and agrees that counsel for Complainant and the staff of the Board may communicate directly  
21 with the Board regarding this stipulation and surrender, without notice to or participation by  
22 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he  
23 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board  
24 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,  
25 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this  
26 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
27 be disqualified from further action by having considered this matter.

28 ///

1 13. The parties understand and agree that Portable Document Format (PDF) and facsimile  
2 copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures  
3 thereto, shall have the same force and effect as the originals.

4 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
5 the Board may, without further notice or formal proceeding, issue and enter the following Order:

6 **ORDER**

7 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 78546, issued  
8 to Respondent DUK HWAN KIM, M.D., is surrendered and accepted by the Board.

9 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the  
10 acceptance of the surrendered license by the Board shall constitute the imposition of discipline  
11 against Respondent. This stipulation constitutes a record of the discipline and shall become a part  
12 of Respondent's license history with the Board.

13 2. Respondent shall lose all rights and privileges as a Physician and Surgeon in  
14 California as of the effective date of the Board's Decision and Order.

15 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was  
16 issued, his wall certificate on or before the effective date of the Decision and Order.

17 4. If Respondent ever files an application for licensure or a petition for reinstatement in  
18 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must  
19 comply with all the laws, regulations and procedures for reinstatement of a revoked or  
20 surrendered license in effect at the time the petition is filed, and all of the charges and allegations  
21 contained in Accusation No. 800-2018-048671 shall be deemed to be true, correct and admitted  
22 by Respondent when the Board determines whether to grant or deny the petition.

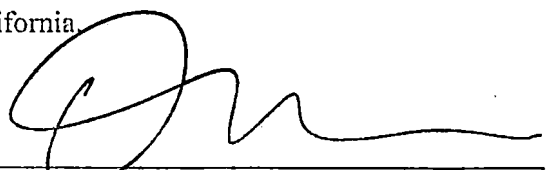
23 5. If Respondent should ever apply or reapply for a new license or certification, or  
24 petition for reinstatement of a license, by any other health care licensing agency in the State of  
25 California, all of the charges and allegations contained in Accusation, No. 800-2018-048671 shall  
26 be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of  
27 Issues or any other proceeding seeking to deny or restrict licensure.

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1 ACCEPTANCE

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

7  
8 DATED: 2/28/20

  
9 \_\_\_\_\_  
10 DUK HWAN KIM, M.D.  
11 *Respondent*

12 I have read and fully discussed with Respondent DUK HWAN KIM, M.D. the terms and  
13 conditions and other matters contained in this Stipulated Surrender of License and Order. I  
14 approve its form and content.

15 DATED: 2/28/2020


  
16 \_\_\_\_\_  
17 FREDRICK M. RAY, ESQ.  
18 *Attorney for Respondent*

19 ENDORSEMENT

20 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
21 for consideration by the Medical Board of California of the Department of Consumer Affairs.

22 DATED: 2.28.20

23 Respectfully submitted,  
24 XAVIER BECERRA  
25 Attorney General of California  
26 E. A. JONES III  
27 Supervising Deputy Attorney General

  
28 BRIAN ROBERTS  
29 Deputy Attorney General  
30 *Attorneys for Complainant*

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1 XAVIER BECERRA  
Attorney General of California  
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6 Telephone: (213) 269-6412  
Facsimile: (213) 897-2810  
7 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO August 13, 2019  
BY: *[Signature]* ANALYST

8  
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:

Case No. 800-2018-048671

14 **Duk Hwan Kim, M.D.**  
15 **800 Leonard Street**  
16 **Montebello, CA 90640**

**ACCUSATION**

17 **Physician's and Surgeon's Certificate**  
18 **No. A 78546,**

Respondent.

19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about April 5, 2002, the Board issued Physician's and Surgeon's Certificate  
25 Number A78546 to Duk Hwan Kim, M.D. (Respondent). The Physician's and Surgeon's  
26 Certificate was in full force and effect at all times relevant to the charges brought herein and will  
27 expire on April 30, 2020, unless renewed.

28 ///

**JURISDICTION**

1  
2       3. This Accusation is brought before the Board, under the authority of the following laws.  
3 All section references are to the Business and Professions Code (Code) unless otherwise  
4 indicated.

5       4. Section 2001.1 of the Code states:

6           “Protection of the public shall be the highest priority for the Medical Board of California in  
7 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the  
8 public is inconsistent with other interests sought to be promoted, the protection of the public shall  
9 be paramount.”

10       5. Section 2227 of the Code states:

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

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

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

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

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

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

24           “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical  
25 review or advisory conferences, professional competency examinations, continuing education  
26 activities, and cost reimbursement associated therewith that are agreed to with the board and  
27 successfully completed by the licensee, or other matters made confidential or privileged by  
28



1 existing law, is deemed public, and shall be made available to the public by the board pursuant to  
2 Section 803.1.”

3 6. Section 2234 of the Code states:

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

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

9 “. . .”

10 7. Section 2236 of the Code states:

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

15 “(b) The district attorney, city attorney, or other prosecuting agency shall notify the  
16 Division of Medical Quality<sup>1</sup> of the pendency of an action against a licensee charging a felony or  
17 misdemeanor immediately upon obtaining information that the defendant is a licensee. The  
18 notice shall identify the licensee and describe the crimes charged and the facts alleged. The  
19 prosecuting agency shall also notify the clerk of the court in which the action is pending that the  
20 defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds  
21 a license as a physician and surgeon.

22 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours  
23 after the conviction, transmit a certified copy of the record of conviction to the board. The  
24 division may inquire into the circumstances surrounding the commission of a crime in order to fix  
25

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26 <sup>1</sup> California Business and Professions Code Section 2002, as amended and effective January 1,  
27 2008, provides that, unless otherwise expressly provided, the term “board” as used in the State Medical  
28 Practice Act (Cal. Bus. & Prof. Code §§§§ 2000, et seq.) means the “Medical Board of California” and  
references to the “Division of Medical Quality” and “Division of Licensing” in the Act or any other  
provision of law shall be deemed to refer to the Board.

1 the degree of discipline or to determine if the conviction is of an offense substantially related to  
2 the qualifications, functions, or duties of a physician and surgeon.

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

6 8. Section 2239 of the Code states:

7 “(a) The use or prescribing for or administering to himself or herself, of any controlled  
8 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic  
9 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to  
10 any other person or to the public, or to the extent that such use impairs the ability of the licensee  
11 to practice medicine safely or more than one misdemeanor or any felony involving the use,  
12 consumption, or self-administration of any of the substances referred to in this section, or any  
13 combination thereof, constitutes unprofessional conduct. The record of the conviction is  
14 conclusive evidence of such unprofessional conduct.

15 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is  
16 deemed to be a conviction within the meaning of this section. The Medical Board may order  
17 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the  
18 denial of the license when the time for appeal has elapsed or the judgment of conviction has been  
19 affirmed on appeal or when an order granting probation is made suspending imposition of  
20 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal  
21 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,  
22 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or  
23 indictment.”<sup>2</sup>

24 9. Section 490 of the Code states:

25 ///

26  
27 <sup>2</sup> There is a nexus between a physician’s use of alcoholic beverages and his or her fitness to  
28 practice medicine, established by the Legislature in Section 2239, in “all cases where a licensed physician  
used alcoholic beverages to the extent or in such a manner as to pose a danger to himself or others.”  
(*Watson v. Superior Court (Medical Board)* (2009) 176 Cal.App.4th 1407, 1411.)

1           “(a) In addition to any other action that a board is permitted to take against a licensee, a  
2 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
3 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
4 or profession for which the license was issued.

5           “(b) Notwithstanding any other provision of law, a board may exercise any authority to  
6 discipline a licensee for conviction of a crime that is independent of the authority granted under  
7 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
8 of the business or profession for which the licensee's license was issued.

9           “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
10 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
11 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
12 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
13 made suspending the imposition of sentence, irrespective of a subsequent order under the  
14 provisions of Section 1203.4 of the Penal Code.

15           “(d) The Legislature hereby finds and declares that the application of this section has been  
16 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
17 554, and that the holding in that case has placed a significant number of statutes and regulations  
18 in question, resulting in potential harm to the consumers of California from licensees who have  
19 been convicted of crimes. Therefore, the Legislature finds and declares that this section  
20 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
21 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change  
22 to, but rather are declaratory of, existing law.”

23           10. Section 493 of the Code states:

24           “Notwithstanding any other provision of law, in a proceeding conducted by a board within  
25 the department pursuant to law to deny an application for a license or to suspend or revoke a  
26 license or otherwise take disciplinary action against a person who holds a license, upon the  
27 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
28 qualifications, functions, and duties of the licensee in question, the record of conviction of the

1 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
2 and the board may inquire into the circumstances surrounding the commission of the crime in  
3 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
4 qualifications, functions, and duties of the licensee in question.

5 “...”

6 11. California Code of Regulations, title 16, Section 1360 states:

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

16 **FACTUAL SUMMARY**

17 12. On April 11, 2019, in the case entitled the *People of the State of California v. Duk*  
18 *Hwan Kim*, case number 18CM10820, in the Superior Court of California, County of Orange,  
19 Respondent, upon his plea of guilty, was convicted of driving a vehicle while under the influence  
20 of alcohol, in violation of Vehicle Code Section 23152, subdivision (a), a misdemeanor,<sup>3</sup> and  
21 having a blood alcohol content of .08 percent or more, in violation of Vehicle Code Section  
22 23152, subdivision (b), also a misdemeanor.<sup>4</sup> The remaining criminal charge was dismissed as  
23 part of Respondent’s plea agreement with the Orange County District Attorney’s Office.  
24 Respondent was placed on three years of informal probation with the following terms and  
25 conditions:

26 \_\_\_\_\_  
27 <sup>3</sup> Vehicle Code Section 23152, subdivision (a) provides: “It is unlawful for a person who is under  
the influence of any alcoholic beverage to drive a vehicle.”

28 <sup>4</sup> Vehicle Code Section 23152, subdivision (b) provides: “It is unlawful for a person who has 0.08  
percent or more, by weight, of alcohol in his or her blood to drive a vehicle.”

- 1 A. Complete a three-month alcohol and drug program;
- 2 B. Attend Victim Impact Counseling;
- 3 C. Not drive a vehicle with any measurable amount of alcohol in his blood;
- 4 D. Not drive a vehicle unless licensed and insured;
- 5 E. Submit to chemical testing on demand of any peace or probation officer;
- 6 F. Pay fines and fees;
- 7 G. Obey all laws;
- 8 H. Pay restitution as determined through the Victim Witness Program; and
- 9 I. Make a donation of \$500.00 to the Victim's Emergency Fund.

10 13. The circumstances leading to Respondent's April 2019 conviction are as follows:

11 A. At approximately 10:46 p.m. on September 26, 2018, law enforcement  
12 officers from the Orange Police Department DUI Enforcement Unit were dispatched to the area  
13 of Villa Park Rd. and Center St.

14 B. An individual had dialed "911" and stated she was following a blue Honda  
15 SUV, which had struck something on Jamboree Rd., had two flat tires, and was still driving.

16 C. Law enforcement officers located the vehicle and performed a traffic stop.

17 D. Respondent opened the driver's door and exited the vehicle without being  
18 asked. An officer grabbed his arm and walked him over to the sidewalk.

19 E. The officers observed that the vehicle's front right tire was completely sheered  
20 and he had been driving on the rims of the wheel. The vehicle also had moderate crush damage  
21 to the front bumper and hood.

22 F. The officer asked Respondent if he was aware that his tire was flat and he  
23 responded that he just realized it. The officer asked Respondent what happened and the  
24 Respondent stated that he did not know.

25 G. Respondent displayed symptoms of intoxication including: an odor of alcohol;  
26 bloodshot, watery eyes; slurred speech; and poor balance. Respondent also displayed maximum  
27 deviation in both eyes during a preliminary Horizontal Gaze Nystagmus test.

28 H. The calling party had parked 200 feet east of the traffic stop. She had

1 witnessed Respondent's vehicle weaving between lanes for some period of time. The vehicle  
2 then struck something on Jamboree Rd. and continued driving. She also noticed that the vehicle  
3 had two flat tires. Based on her observations, she called the police and continued to follow the  
4 vehicle until law enforcement arrived to pull over the vehicle.

5 I. The officer asked Respondent whether he had been in a traffic collision and  
6 Respondent stated that he did not recall hitting anything. Respondent was unaware his tire was  
7 flat until the officer showed him. Respondent stated he had not consumed any alcohol or used  
8 any drugs/medication prior to driving.

9 J. Meanwhile, other law enforcement officers were dispatched to locate the  
10 traffic collision scene where a vehicle had collided with the curb and a wooden fence, causing  
11 damage. A plastic fender flare was located at the scene and collected as evidence. The officer  
12 confirmed the plastic fender flare matched the one that was missing on the Respondent's vehicle.

13 K. Standardized Field Sobriety Tests (SFSTs) were conducted and Respondent  
14 displayed symptoms of impairment including an unsteady gait, sustained and distinct Horizontal  
15 Gaze Nystagmus at maximum deviation, and poor performance on the other tests performed.  
16 Respondent was offered but refused the Preliminary Alcohol Screening (PAS) test.

17 L. Based on the Respondent's driving, the officer's observations, the damage to  
18 the vehicle, the traffic collision, and the Respondent's objective symptoms of intoxication and  
19 poor performance on the SFSTs, the Respondent was placed under arrest for a violation of  
20 Vehicle Code section 23152, subdivision (a). Respondent was transported to the Orange Police  
21 Department for chemical testing and booking.

22 M. Respondent refused to voluntarily submit to a chemical test, and law  
23 enforcement obtained a search warrant to obtain a blood sample. On September 27, 2018, at  
24 approximately 0040 hours, the warrant was signed. Respondent was given a copy of the signed  
25 warrant and a blood sample was collected and placed into evidence around 1:09 a.m. The blood  
26 sample revealed that Respondent's blood alcohol level was approximately 0.161 percent.  
27 Respondent was booked at the Orange County Jail.

28 14. On November 21, 2018, Respondent was charged with a violation of Count 1: Vehicle

1 Code section 23152, subdivision (a), Driving Under the Influence of Alcohol, a misdemeanor,  
2 Count 2: Vehicle Code section 23152, subdivision (b), Driving with a Blood Alcohol  
3 Concentration .08% or more, a misdemeanor, and Count 3: Vehicle Code section 20002,  
4 subdivision (a), Hit and Run with Property Damage, a misdemeanor. As to Counts 1 and 2, it was  
5 further alleged pursuant to Vehicle Code section 23578 that Respondent had a blood alcohol level  
6 of .15% and more, and that Respondent violated Vehicle Code section 23612 by willfully and  
7 unlawfully refusing a peace officer's request to submit to a chemical test.

8 15. On April 11, 2019, Respondent pled guilty to Counts 1 and 2, and the remaining count  
9 and allegations were dismissed with a Harvey Waiver.<sup>5</sup>

10 16. On May 2, 2019, Respondent voluntarily participated in an interview conducted by an  
11 investigator with the Medical Board of California's Complaint Investigation Office in Glendale,  
12 CA. During the interview, Respondent stated that he had used bad judgment by drinking more  
13 alcohol than he could handle at a relative's house and attempting to drive back home.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Conviction of a Substantially Related Crime)**

16 17. By reason of the facts set forth in paragraphs 12 through 15 above, Respondent is  
17 subject to disciplinary action under Section 2236, subdivision (a), and Section 490 of the Code, as  
18 well as California Code of Regulations, title 16, Section 1360, in that Respondent has been  
19 convicted of a crime substantially related to the qualifications, function or duties of a physician  
20 and surgeon.

21 18. Respondent's acts and/or omissions as set forth in paragraphs 12 through 15 above,  
22 whether proven individually, jointly, or in any combination thereof, constitutes the conviction of  
23 a crime substantially related to the qualifications, function or duties of a physician and surgeon,  
24 pursuant to Section 2236, subdivision (a), and Section 490 of the Code, as well as California  
25 Code of Regulations, title 16, Section 1360.

26 ///

27 <sup>5</sup> Restitution may be imposed on dismissed counts if the plea is freely made, the court approves all  
28 conditions, and the offender files a Harvey Waiver. (People v. Beck (1993) 17 Cal.App.4<sup>th</sup> 209, 215.)  
Under a Harvey Waiver, the offender is required to pay restitution on all counts connected with the plea.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Use of Alcoholic Beverages in a Dangerous Manner)**

3 19. By reason of the facts set forth in paragraphs 12 through 16 above, Respondent is  
4 subject to disciplinary action under Section 2239 of the Code in that Respondent used alcoholic  
5 beverages to the extent, or in such a manner, as to be dangerous and injurious to himself or to any  
6 other person or to the public.

7 20. Respondent's acts and/or omissions as set forth in paragraphs 12 through 16 above,  
8 whether proven individually, jointly, or in any combination thereof, constitutes the use of  
9 alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to  
10 himself, or to any other person or to the public, pursuant to Section 2239 of the Code.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct)**

13 21. By reason of the facts set forth in paragraph 12 through 16 above, Respondent is  
14 subject to disciplinary action under Section 2234, subdivision (a) of the Code in that Respondent  
15 has been convicted of a crime substantially related to the qualifications, functions, or duties of a  
16 physician and surgeon, and Respondent has used alcoholic beverages to the extent, or in such a  
17 manner, as to be dangerous and injurious to himself, or to any other person or to the public.

18 22. Respondent's acts and/or omissions as set forth in paragraphs 12 through 16 above,  
19 whether proven individually, jointly, or in any combination thereof, constitutes the conviction of  
20 a crime substantially related to the qualifications, functions, or duties of a physician and surgeon,  
21 and the use of alcoholic beverages to the extent, or in such a manner, as to be dangerous and  
22 injurious to himself, or to any other person or to the public, pursuant to Section 2234, subdivision  
23 (a) of the Code.

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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 A 78546, issued to Duk Hwan Kim, M.D.;
2. Revoking, suspending or denying approval of Duk Hwan Kim, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Duk Hwan Kim, 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: August 13, 2019

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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