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

In the Matter of the Accusation Against: **George William Commons, M.D.** **Physician's and Surgeon's Certificate No. G 17176** **Respondent.**	**Case No. 800-2017-034654**

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 DEC 23 2020.

IT IS SO ORDERED NOV 23 2020.

MEDICAL BOARD OF CALIFORNIA

Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
LAWRENCE MERCER
Deputy Attorney General
State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3488
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **GEORGE WILLIAM COMMONS, M.D.** 26379 Alexander Pl. Los Altos Hills, CA 94022-2006 Physician's and Surgeon's Certificate No. G 17176 Respondent.	Case No. 800-2017-034654 OAH No. 2020070201 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Lawrence Mercer, Deputy Attorney General.

2. Respondent George William Commons, M.D. (Respondent) is represented in this proceeding by his attorneys Cyrus A. Tabari and Sheuerman, Martini, Tabari, Zenere & Garvin, 1033 Willow St., San Jose, CA 95125.

3. On or about September 17, 1969, the Medical Board issued Physician's and Surgeon's Certificate Number G 17176 to George William Commons, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein, but expired on September 30, 2020.

JURISDICTION

4. Accusation No. 800-2017-034654 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 June 27, 2018. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2017-034654 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-034654. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. 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.

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

CULPABILITY

8. Respondent agrees that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2017-034654 and that he has thereby subjected his Physician's and Surgeon's Certificate to

disciplinary action. Respondent further agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

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

10. 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.

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

DISCIPLINARY ORDER

1. **IT IS HEREBY ORDERED:** that Physician's and Surgeon's Certificate No. G 17176 issued to Respondent George William Commons, M.D., shall be and is hereby publicly reprimanded pursuant to California Business and Professions Code § 2227(a)(4). This Public Reprimand, which is issued in connection with Respondent's actions as set forth in Accusation No. 800-2017-034654, is as follows:

On and before July 7, 2014, you were retained as an expert witness for the

defense in a civil malpractice action and, in your professional capacity, you gave sworn deposition testimony in that matter. You testified that the surgeon was qualified to perform the cosmetic procedure at issue, that informed consent was obtained and that the procedure was performed with the skill and knowledge required by the standard of care. This testimony was inaccurate and unsupported by the facts of the case. The surgeon did not possess the qualifications to perform the cosmetic procedure, full informed consent was not obtained from the patient and the surgeon did not exercise the surgical skill and knowledge required by the standard of care. Consequently, the Board issues this public reprimand.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Cyrus A. Tabari. 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 agree to be bound by the Decision and Order of the Medical Board of California.

DATED: Oct 20/2020

GEORGE WILLIAM COMMONS, M.D.
Respondent

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

SHEUERMAN, MARTINI, TABARI, ZENERE & GARVIN

DATED: 10/23/20

CYRUS A. TABARI
Attorney for Respondent

ENDORSEMENT

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

DATED: 10/26/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

LAWRENCE MERCER
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2017-034654

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
LAWRENCE MERCER
Deputy Attorney General
State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3488
Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 27 2018
BY: ANALYST

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

In the Matter of the Accusation Against:	Case No. 800-2017-034654
GEORGE WILLIAM COMMONS, M.D. 1515 El Camino Real, Ste C Palo Alto, CA 94306 Physician's and Surgeon's Certificate No. G 17176, Respondent.	**ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 17, 1969, the Medical Board issued Physician's and Surgeon's Certificate Number G 17176 to George William Commons, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2018, unless renewed.

JURISDICTION

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

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states:

"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.

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

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

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

"(d) Incompetence.

"(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."

ETHICAL PRINCIPLES

6. The Principles of Medical Ethics and the Opinions of the American Medical Association (AMA) Council on Ethical and Judicial Affairs make up the AMA Code of Medical Ethics.

7. Code of Medical Ethics Opinion No. 9.7.1 states:

"Medical evidence is critical in a variety of legal and administrative proceedings. As citizens and as professionals with specialized knowledge and experience, physicians have an obligation to assist in the administration of justice.

"Whenever physicians serve as witnesses they must:

"(a) Accurately represent their qualifications.

"(b) Testify honestly.

"(c) Not allow their testimony to be influenced by financial compensation. Physicians must not accept compensation that is contingent on outcome of the litigation.

". . . Physicians who testify as expert must:

"(h) Testify only in areas in which they have appropriate training and recent, substantive experience and knowledge.

"(i) Evaluate cases objectively and provide an independent opinion.

"(j) Ensure that their testimony:

"1. Reflects current scientific thought and standards of care that have gained acceptance among peers in the relevant field.

"2. Appropriately characterizes the theory on which testimony is based if the theory is not widely accepted in the profession.

"3. Considers standards that prevailed at the time the event under review occurred when testifying about a standard of care.

"Organized medicine, including state and specialty societies and medical licensing boards, has a responsibility to maintain high standards for medical witnesses by assessing claims of false or misleading testimony and issuing disciplinary sanctions as appropriate."

8. The American Society for Aesthetic Plastic Surgery (ASAPS), founded in 1967, "is the leading professional organization of plastic surgeons certified by the American Board of Plastic Surgery who specialize in aesthetic (cosmetic) plastic surgery. . . The mission of the American Society for Aesthetic Plastic Surgery includes continuing medical education, public education and patient advocacy."

9. The Code of Ethics of the American Society for Aesthetic Plastic Surgery (ASAPS) provides guidance to ASAPS members to avoid the unethical practice of aesthetic medicine.

10. Section 4.01 of the ASAPS Code of Ethics states:

"Members may testify as expert witnesses when appropriate, but only in an objective and unbiased manner. Compensation may not be contingent upon the outcome of the litigation. Testimony, including testimony as to credentials or qualifications, which is false, fraudulent, deceptive or misleading is a violation of this Code. Members serving as experts must:

"... (b) Thoroughly review the medical facts and testify to their content fairly, honestly and impartially.

"... (d) Provide evidence-based testimony regarding the standard of care, citing peer-reviewed plastic surgery literature where possible and identifying personal opinion as such.

"... (f) Neither condemn performance that clearly falls within the community standard of care nor endorse or condone performance that clearly falls outside of such standard of care."

CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Gross Negligence/Breach of Ethics)

11. Respondent George William Commons, M.D. is subject to disciplinary action under section 2234 and/or 2234(b) and/or 2234(d) and/or 2234(e), as well as the above-recited ethical principles, guidelines and opinions, in that Respondent provided testimony in a civil malpractice action which was not evidence-based or objective and which had the tendency to deceive or mislead. The circumstances are as follows:

12. On and before July 7, 2014, Respondent was retained as an expert witness for the defense in a civil malpractice action and, in his professional capacity, he gave sworn deposition testimony in that matter. In that deposition, and at all other relevant times, Respondent held himself out as an expert in plastic surgery, with special qualifications in facelifts and liposuction.

13. The civil action in which Respondent gave testimony arose from an October 4, 2011 skin excision facelift that was performed by an orthopedic surgeon. After the procedure, the patient was left with alopecia in the temple area, visible scars extending below the ear lobe and

also in the front and back of her ear and middle of her cheeks. She underwent multiple procedures in an attempt to revise and repair the scarring. She was also left with significant contour deformities from liposuction, especially in the shoulder areas.

14. The orthopedic surgeon who performed the skin excision facelift had little structured training in the specialty of Plastic Surgery. In general, plastic surgery residency training involves completion of general surgery training followed by three years in a plastic surgery program. Typically, plastic surgery residents do not perform facelift procedures until the third year in plastic surgery, i.e., the sixth year in training. In general, orthopedic residency involves two years of general surgery, followed by three years of orthopedic training. The orthopedic surgeon testified that his training consisted of six months of rotation through the plastic surgery department during the first half of his second year in general surgery (which was also his second year in postgraduate training).[1] Other than this short exposure to structured training, and before attempting facelift procedures, the orthopedic surgeon had only read literature on cosmetic facial surgery and viewed DVDs. Prior to the November 4, 2011 facelift procedure, the orthopedic surgeon had performed 5-10 similar procedures on other patients.

15. Despite the orthopedic surgeon's lack of structured training in the specialty of plastic surgery, Respondent repeatedly testified that the surgeon was qualified to perform the November 4, 2011 facelift procedure. These assertions were directly contrary to his own published advice that cosmetic surgery patients should entrust their care only to surgeons who are board-certified in plastic as well as general surgery. Respondent had published multiple criteria for selecting an appropriate surgeon; yet, despite the fact that the orthopedic surgeon lacked any of these criteria, he insisted that the surgeon was well qualified. In fact, the orthopedic surgeon lacked the qualifications, knowledge and skills to perform the November 4, 2011 facelift procedure.

16. Prior to performing the November 4, 2011 procedure, the orthopedic surgeon had the patient sign informed consent forms; however, the consent forms did not state all of the

[1] Inquiry to the physician's medical school did not confirm the alleged plastic surgery rotation.

procedures, including incisions in the temple area, that he actually performed. Despite the inadequacy of the consent documents, Respondent asserted that informed consent was obtained.

17. The orthopedic surgeon's medical records for the facelift and other procedures were grossly inadequate. He did not create a preoperative note for the planned procedure. His operative note was created with a template and did not accurately reflect what occurred before and during the procedure. The surgery that he performed in the temple area was neither mentioned nor described and the note lacked any information regarding where the incision line was made, how much undermining was done or how much tissue was removed. While the physician stated that he did take photographs, these were reported to be missing after the patient filed her malpractice suit. No record of the follow up appointment to remove the sutures was made. Records for several liposuction procedures were virtually identical in content and clearly boilerplate. Despite these significant inadequacies in the record keeping, Respondent testified that the records were within the standard of care.

18. The skin excision facelift without undermining performed by the orthopedic surgeon clearly fell outside the standard of care. Respondent testified that he had performed a small number of similar procedures early in his career, but stated he had not done so in many years and had never performed such a procedure without undermining. He stated that he had never taught plastic surgery residents to perform such a procedure and would not recommend it. Nevertheless, in his testimony he supported the orthopedic surgeon, who he stated "chose a very simple route" to perform a procedure that matched his minimal training. He testified that the surgeon's attempt to advance the temporal tissue was not a recognized procedure and in his experience did not work well. Despite acknowledging that the facelift performed did not conform to any recognized plastic surgery procedure, Respondent asserted that the surgeon complied with the standard of care in every respect and that his surgery did not cause the significant scarring that developed post-operatively. He also stated that, despite the apparent disfigurement to her shoulder area, the liposuction performed was within the standard of care.

19. Respondent is guilty of unprofessional conduct and Respondent's certificate is subject to disciplinary action under section 2234 and/or 2234(b) and/or 2234(d) and/or 2234(e), in that

Respondent provided testimony which was neither objective nor evidence-based. His testimony endorsing the procedures performed by an orthopedic surgeon without training in facial plastic surgery, supporting clearly inadequate medical records and condoning grossly negligent surgical techniques constitutes an extreme departure from the standard of care, as well as dishonest and unethical conduct.

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 17176, issued to George William Commons, M.D.;

2. Revoking, suspending or denying approval of George William Commons, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering George William Commons, 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: June 27, 2018

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

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