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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>Guillermo J. Gomez, M.D.<br><br>Physician's and Surgeon's Certificate No. A 69815<br><br>Respondent. | Case No. 800-2017-032272 |

## 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 January 1, 2021.

IT IS SO ORDERED DEC 23 2020.

MEDICAL BOARD OF CALIFORNIA

REJI VARGHESE
DEPUTY DIRECTOR

For: William Prasifka
Executive Director

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
REBECCA L. SMITH
Deputy Attorney General
State Bar No. 179733
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6475
Facsimile: (916) 731-2117
*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>GUILLERMO J. GOMEZ, M.D.<br>3750 Arlington Avenue<br>Riverside, California 92506<br><br>Physician's and Surgeon's Certificate<br>No. A 69815,<br><br>Respondent. | Case No. 800-2017-032272<br><br>OAH No. 2020050205<br><br>**STIPULATED SURRENDER OF LICENSE AND 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 Rebecca L. Smith, Deputy Attorney General.

2. Guillermo J. Gomez, M.D. ("Respondent") is represented in this proceeding by attorney Kevin D. Cauley, whose address is 624 South Grand Avenue, 22nd Floor, Los Angeles, California 90017-3323.

3. On or about September 17, 1999, the Board issued Physician's and Surgeon's Certificate No. A 69815 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-032272 and will expire on April 30, 2021, unless renewed.

## JURISDICTION

4. Accusation No. 800-2017-032272 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 April 24, 2020. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2017-032272 is attached as Exhibit A and incorporated by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-032272. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and 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 understands that the charges and allegations in Accusation No. 800-2017-032272, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

///

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

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

**RESERVATION**

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

**CONTINGENCY**

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, 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 Surrender 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.

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

14. 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 Order:

## ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 69815, issued to Respondent GUILLERMO J. GOMEZ, M.D., is surrendered and accepted by the Board, effective January 1, 2021 (the "Effective Date").

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

2. Respondent shall lose all rights and privileges as a physician in California as of the Effective Date.

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

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2017-032272 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 800-2017-032272 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

///

///

///

///

///

## ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney Kevin D. Cauley. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 11-02-2020

GUILLERMO J. GOMEZ, M.D.
*Respondent*

I have read and fully discussed with Respondent GUILLERMO J. GOMEZ, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 11-3-2020

KEVIN D. CAULEY
*Attorney for Respondent*

## ENDORSEMENT

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

DATED: 11-3-2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

REBECCA L. SMITH
Deputy Attorney General
*Attorneys for Complainant*

LA2020600091
63717715.docx

# Exhibit A

**Accusation No. 800-2017-032272**

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
REBECCA L. SMITH
Deputy Attorney General
State Bar No. 179733
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6475
Facsimile: (916) 731-2117
*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>GUILLERMO J. GOMEZ, M.D.<br>3750 Arlington Avenue<br>Riverside, California 92506<br><br>Physician's and Surgeon's Certificate<br>No. A 69815,<br><br>Respondent. | Case No. 800-2017-032272<br><br>**ACCUSATION** |

## PARTIES

1. Christine J. Lally ("Complainant") brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs ("Board").

2. On or about September 17, 1999, the Medical Board issued Physician's and Surgeon's Certificate Number A 69815 to Guillermo J. Gomez, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2021, unless renewed.

///

///

## JURISDICTION

3. This Accusation is brought before the Board under the authority of the following provisions of the California 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 2227 of the Code states:

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

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

(2) Have his or her right to practice suspended for a period not to exceed one year 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.

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

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

6. 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:

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

(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.

(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 2261 of the Code states:

Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.

///

///

8. Section 2262 of the Code states:

Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars ($500) for a violation of this section.

9. 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.

## FACTUAL ALLEGATIONS

10. On April 25, 2017, the Medical Board of California ("Board") received a Report of Settlement pursuant to Business and Professions Code section 801 ("801 Report") from Respondent's professional liability carrier notifying the Board that it paid a settlement to Patient 1[1] on behalf of Respondent for an alleged failure to diagnose testicular cancer. Patient 1's medical records, including Respondent's progress notes for June 15, 2013, October 9, 2013, November 14, 2014 and December 1, 2014 were included with the 801 Report.

11. The Board requested that Respondent provide a written summary of the care and treatment he rendered to Patient 1 as well as a copy of his curriculum vitae.

12. On June 9, 2017, the Board received correspondence from Respondent's then attorney summarizing the care and treatment Respondent provided to Patient 1. Copies of Respondent's progress notes for Patient 1's June 15, 2013, October 9, 2013, November 14, 2014 and December 1, 2014 office visits were also attached to the correspondence along with a copy of Respondent's curriculum vitae.

13. In response to an investigational subpoena issued to Respondent for the certified medical records of Patient 1, the Health Quality Investigations Unit of the Division of Investigations, Department of Consumer Affairs ("HQIU") received certified medical records for Patient 1 from Respondent's office.

[1] For privacy purposes, the patient in this Accusation is referred to as Patient 1.

14. None of the three versions of Patient 1's chart produced by Respondent to the Board match. There is no indication as to which version of the chart is the original and which version was altered. It is clear, however, that all versions of Patient 1's chart in the Board's possession have been altered in some manner.

15. On February 11, 2020, Respondent appeared at the HQIU Rancho Cucamonga Field Office with new counsel for a scheduled Board interview regarding his care and treatment of Patient 1. At that time, Respondent invoked his Fifth Amendment right against self-incrimination in response to all questions regarding his background, training and current medical practice as well as the medical care and treatment provided to Patient 1. Respondent also invoked his Fifth Amendment right against self-incrimination to questions regarding the different charts he produced to the Board, the alterations to the charts, who made the alterations and the specific notation he made in two versions of the charts which state, "amendment done December 20, 2014."

16. During the interview, Respondent's attorney confirmed that Respondent provided the Board a response regarding Respondent's care and treatment of Patient 1 by way of correspondence from Respondent's prior counsel dated June 8, 2017.

**FIRST CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Gross Negligence)**

17. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code, in that he engaged in gross negligence in his record keeping for Patient 1. Complainant refers to and, by this reference, incorporates herein, paragraphs 10 through 16, above, as though fully set forth herein. The circumstances are as follows:

18. There are significant unexplained differences in the versions of Respondent's June 15, 2013, October 9, 2013, November 14, 2014 and December 1, 2014 Progress Notes for Patient 1, which Respondent produced to the Board and received by the Board on April 25, 2017, June 9, 2017 and August 15, 2019. In addition to altered progress notes, Respondent produced different versions of Patient 1's complete chart to the Board.

///

19. The standard of care requires that a physician not alter original patient medical records. If revisions or additional clarifications are necessary to a patient's medical records, the physician should make the revisions or clarifications as soon as possible relative to the original note and date and time the revisions or clarifications without making the original entry unreadable. The entry that has the revisions or clarifications should also set forth a clear explanation of the reason for the record modification.

20. Respondent's acts and/or omissions as set forth in paragraphs 10 through 19, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

**SECOND CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct Involving Dishonesty or Corruption)**

21. Respondent is subject to disciplinary action under 2234, subdivision (e), of the Code, in that he committed unprofessional conduct, involving dishonesty or corruption, when he created or caused to create significantly different versions of his June 15, 2013, October 9, 2013, November 14, 2014 and December 1, 2014 Progress Notes for Patient 1. Complainant refers to and, by this reference, incorporates herein, paragraphs 10 through 20, above, as though fully set forth herein.

22. Respondent's acts and/or omissions as set forth in paragraphs 10 through 21, above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct, involving dishonesty or corruption, pursuant to section 2234, subdivision (e), of the Code. Therefore, cause for discipline exists.

**THIRD CAUSE FOR DISCIPLINE**

**(Making or Signing False Documents)**

23. By reason of the facts set forth above in paragraphs 10 through 22, Respondent's license is subject to disciplinary action pursuant to section 2261 of the Code for knowingly making or signing documents directly or indirectly related to the practice of medicine which falsely represented the existence or nonexistence of a state of facts.

///

///

24. Respondent's acts and/or omissions set forth in paragraphs 10 through 23 above, whether proven individually, jointly, or in any combination thereof, constitute knowingly making or signing documents directly or indirectly related to the practice of medicine which falsely represented the existence or nonexistence of a state of facts in violation of section 2261 of the Code. Therefore, cause for discipline exists.

**FOURTH CAUSE FOR DISCIPLINE**

**(Altering, Modifying or Creating False Medical Records)**

25. Respondent is subject to disciplinary action under 2262 of the Code for altering, modifying or creating false medical records with fraudulent intent when he created or caused to be created significantly different versions of his June 15, 2013, October 9, 2013, November 14, 2014, and December 1, 2014 Progress Notes for Patient 1. Complainant refers to and, by this reference, incorporates herein, paragraphs 10 through 24, above, as though fully set forth herein.

26. Respondent's acts and/or omissions set forth in paragraphs 10 through 25 above, whether proven individually, jointly, or in any combination thereof, constitute altering, modifying or creating false medical records with fraudulent intent in violation of section 2261 of the Code. Therefore, cause for discipline exists.

**FIFTH CAUSE FOR DISCIPLINE**

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

27. Respondent is subject to disciplinary action under section 2266 of the Code for failing to maintain adequate and accurate records relating to his care and treatment of Patient 1. Complainant refers to and, by this reference, incorporates herein, paragraphs 10 through 26, above, as though fully set forth herein.

**SIXTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Failure to Cooperate in Board Investigation)**

28. Respondent is subject to disciplinary action under section 2234, subdivision (g), of the Code, in that he committed unprofessional conduct by failing to participate in the Board's interview during its investigation. Complainant refers to and, by this reference, incorporates herein, paragraphs 10 through 16, above, as though fully set forth herein.

29. Respondent's acts and/or omissions as set forth in paragraphs 10 through 16, and 28, above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct by failing to participate in an interview by the Board during its investigation, pursuant to section 2234, subdivision (g), of the Code. Therefore, cause for discipline exists.

**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 69815, issued to Guillermo J. Gomez, M.D.;

2. Revoking, suspending or denying approval of Guillermo J. Gomez, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Guillermo J. Gomez, 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: April 24, 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
*Complainant*

LA2020600091
63234754.docx