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

In the Matter of the Accusation Against: Joseph Kent Davidson, M.D. Physician's & Surgeon's Certificate No G86649 Respondent	Case No. 800-2016-026032

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 February 24, 2021.

IT IS SO ORDERED January 25, 2021.

MEDICAL BOARD OF CALIFORNIA

By: Ronald H. Lewis, MD

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

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
JONATHAN NGUYEN
Deputy Attorney General
State Bar No. 263420
California Department of Justice
300 So. Spring Street, Suite 1702
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **JOSEPH KENT DAVIDSON, M.D.** **P.O. Box 2614** **Pasadena, CA 91102** **Physician's and Surgeon's Certificate No. G 86649** Respondent.	Case No. 800-2016-026032 OAH No. 2019110976 **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. 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 Jonathan Nguyen, Deputy Attorney General.

2. Respondent Joseph Kent Davidson, M.D. (Respondent) is represented in this proceeding by attorneys Carolyn Lindholm and Peter Osinoff, whose address is: BONNE BRIDGES et. al., 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071.

3. On or about September 25, 2002, the Medical Board of California issued Physician's and Surgeon's Certificate No. G 86649 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. 800-2016-026032 and will expire on January 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-026032 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 29, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-026032 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-026032. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent does not contest that at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation

No. 800-2016-026032, and that he has thereby subjected his Physician's and Surgeon's Certificate No. G 86649 to disciplinary action.

10. Respondent agrees that his Physician's and Surgeon's Certificate No. G 86649 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

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 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.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including 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 Disciplinary Order:

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DISCIPLINARY ORDER

A. **PUBLIC REPRIMAND**

IT IS HEREBY ORDERED that Respondent Joseph Kent Davidson, M.D., Physician's and Surgeon's Certificate No. G 86649, shall be and is hereby Publicly Reprimanded, with terms and conditions below, pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand is issued in connection with Respondent's violations of the Medical Practice Act for his failure to perform and/or document an adequate physical examination of Patient A on August 24, 2016, as set forth in Accusation No. 800-2016-026032, attached as exhibit A and incorporated herein by reference.

B. **EDUCATION COURSE**. Within sixty (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 correcting any areas of deficient practice or knowledge 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 sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this condition within one year of the effective date of this Decision.

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 shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the

Continuing Medical Education (CME) requirements for renewal of licensure.

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

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later. Respondent must complete this condition within one year of the effective date of this Decision.

Failure to attend and complete the medical record keeping course shall constitute general unprofessional conduct and shall be grounds for further disciplinary action.

D. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its

designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter Osinoff. 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: 31 Oct 2020

Joseph Kent Davidson, ~~M.D.~~
Respondent

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

DATED: 11/1/2020

Peter Osinoff
Attorney for Respondent

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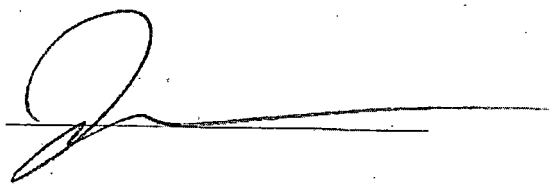
ENDORSEMENT

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

Dated: 11/2/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General



JONATHAN NGUYEN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-026032

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Aug. 29 2019
BY ANALYST

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

In the Matter of the Accusation Against: **Joseph Kent Davidson, M.D.** **P.O. Box 2614** **Pasadena, CA 91102** **Physician's and Surgeon's Certificate No. G 86649,** Respondent.	Case No. 800-2016-026032 **ACCUSATION**

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 25, 2002, the Medical Board issued Physician's and Surgeon's Certificate Number G 86649 to Joseph Kent Davidson, 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 January 31, 2020, 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 (Code) unless otherwise indicated.

STATUTORY PROVISIONS

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 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.

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

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

7. 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 which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

(h) The repeated 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.

8. 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

Patient A

9. On or about August 24, 2016, Respondent, a surgeon, saw Patient A,[1] an 72-year-old man, after being referred by another doctor for evaluation of fluctuating droopy eyelids, recurring and worsening following a previous eyebrow surgery performed on or about February 20, 2015. The patient's past ocular history included dry eyes. The record of the exam itself is limited to an external examination and confrontation of visual fields. There was no documentation of visual acuity. The patient stated that he could see better with his eyelids lifted manually. The patient's past medical history is positive for hypertension, diabetes type 2, and anxiety. In his complaint form filed by the patient, the patient included, "heart issues."

10. However, several elements were missing from the records for this type of examination, including documentation of the patient's visual acuity, slit lamp exam (to search for dry eyes since this was one of the concerns raised by the physician), external exam with measurements of eyelid fissure, marginal reflex distance (MRD), and levator muscle function. Eyelid fissure, MRD, and levator function are essential parts of an oculoplastic evaluation in this circumstance. Thus, Respondent's medical records for Patient A failed to include all of the essential elements for an oculoplastic exam here.

11. External photographs contained only left eye 45 degree angles and frontal views. However, Respondent should have obtained photographs of the patient's full face front view and both right and left eye 45 degree photos. The record further states "No surgery by JKD on this patient . . . patient cancelled surgery at last minute today, so discount no longer valid . . . ."

12. Respondent also failed to adequately diagnose, document (measurements of lid fissure, MRD, levator function, position of the brows, visual fields, external photos), and/or formulate a surgical plan and discuss the options with the patient. Regarding Respondent's plan (including anticipated billing), Respondent's plan should have included an attempt to initially bill

[1] Patient names are anonymized based on privacy concerns.

Medicare and/or insurance companies for surgical procedures with documentation of medical necessity, before billing the patient directly. His preoperative discussions with the patient should have also included the patient's acknowledgement of the so-called Advanced Beneficiary Notice of Noncoverage (ABN, form CMS-R-131).[2] Physicians are required to provide ABNs in connection with services that Medicare may not cover. The ABN should acknowledge that coverage is uncertain and stipulate that the patient promises to pay the bill if Medicare does not. This information allows a patient to make a more informed choice as to whether to undergo the procedure and pay for the service.

13. The medical records also describe "droopy lids OU," unspecified ptosis right/left eye, and brow ptosis as interchangeable terms. Due to Respondent's inadequate evaluation and record keeping (namely, the absences of the patient's lid fissure measurements, MRD, and levator function measurements), it is difficult for a subsequent reviewer to evaluate and determine which procedure would be more appropriate. Respondent's Plan stated, "No surgery by JKD on this patient," and later in the same paragraph, recommended direct brow lift both eyes with a cash price of $3,900. When the patient was reluctant due to cost, he recommended a direct brow lift[3] on the right eye only for $1,500 and to bill Medicare for a browpexy[4] on the left eye. However, there was no discussion of an ABN form from Medicare. The medical records fail to explain why the direct brow lift (CPT code 67900, CPT Plus, 2011 ed.) would not be first billed to Medicare. That CPT code is a functional and reconstructive surgery code recognized by Medicare as medically necessary if the condition interferes with vision. Indeed, the patient had the same procedure performed on February 20, 2015, at USC (scars visible on the photograph) using the same billing code.

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[2] This form serves to document that the patient is aware that Medicare usually covers the surgery, but in the event the claim is denied, the patient would be responsible for the payments.

[3] Direct brow lift is a procedure in which an ellipse of skin above the brow is removed and the brow is anchored above the orbital rim. The skin is then closed giving further lift to the brow and upper eyelid complex.

[4] Browpexy is a procedure similar to the direct brow lift, but no skin is removed.

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

14. Respondent Joseph Kent Davidson, M.D. is subject to disciplinary action under Code section 2234, subdivision (c), in that Respondent committed repeated negligent acts. The circumstances are as follows:

15. The facts and circumstances are as set forth in paragraphs 9 through 13 inclusive above, are incorporated by reference herein as if fully set forth.

16. Respondent's acts and/or omissions as set forth in this First Cause for Discipline, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts.

17. Respondent was negligent when he failed to perform and/or document an adequate physical examination of the patient.

18. Respondent was negligent when he failed to adequately inform and/or provide to Patient A, an Advanced Beneficiary Notice of Non-coverage, and/or, failed to adequately inform and/or provide to Patient A, the option of billing Medicare before billing him, and/or, attempted to directly bill the patient for services covered by Medicare (CPT code 67900 - brow lift)

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Medical Records)

19. Respondent is subject to disciplinary action under Code section 2266 in that Respondent failed to maintain adequate and accurate records related to the provision of medical services to a patient. The circumstances are as follows:

20. The allegations of the First Cause for Discipline are incorporated herein by reference as if fully set forth.

21. Respondent failed to adequately document his medical care for Patient A.

THIRD CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

22. Respondent is subject to disciplinary action under Code section 2234, in that his actions and/or omissions represent unprofessional conduct, generally. The circumstances are as

follows:

23. The allegations of the First and Second Causes for Discipline, inclusive, are incorporated herein by reference as if fully set forth.

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 86649, issued to Joseph Kent Davidson, M.D.;

2. Revoking, suspending or denying approval of Joseph Kent Davidson, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Joseph Kent Davidson, 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 29, 2019

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

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