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

In the Matter of the Accusation Against: Albert Joseph DiVittorio, Jr., M.D. Physician's and Surgeon's Certificate No. C32238 Respondent	Case No. 800-2017-039416

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 FEB 18 2021.

IT IS SO ORDERED FEB 11 2021.

MEDICAL BOARD OF CALIFORNIA

By: _____
William Prasifka
Executive Director

XAVIER BECERRA
Attorney General of California
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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: **ALBERT JOSEPH DIVITTORIO, JR., M.D.** **1008 Fowler Way Ste. A** **Placerville, CA 95667** **Physician's and Surgeon's Certificate No. C 32238** Respondent.	Case No. 800-2017-039416 OAH No. **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). This action was brought by then Complainant Kimberly Kirchmeyer solely in her official capacity. The Complainant is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Jannsen Tan, Deputy Attorney General.

2. Albert Joseph DiVittorio, Jr., M.D. (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about May 13, 1970, the Board issued Physician's and Surgeon's Certificate No. C 32238 to Albert Joseph DiVittorio, Jr., M.D. (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. 800-2017-039416 and will expire on July 31, 2019, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-039416 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 September 6, 2019. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2017-039416 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 800-2017-039416. Respondent also has carefully read, 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 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.

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. 800-2017-039416, 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 *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2017-039416 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 further agrees that if he ever petitions for reinstatement of his Physician's and Surgeon's Certificate No. C 32238, or if an accusation is filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2017-039416 shall be deemed true, correct, and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California or elsewhere.

11. 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

12. 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

13. 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. 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.

14. 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.

15. 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. C 32238, issued to Respondent Albert Joseph DiVittorio, Jr., M.D., is surrendered and accepted by the Board.

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 and Surgeon in California as of the effective date of the Board's Decision and Order.

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. 800-2017-039416 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. 800-2017-039416 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 Stipulated Surrender of License and Order. 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: 1/21/2021

ALBERT JOSEPH DIVITTORIO, JR., M.D.
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: 1/21/2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVEN D. MUNI
Supervising Deputy Attorney General

JANNSEN TAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-039416

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept. 6 2019
BY [illegible] ANALYST

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

In the Matter of the Accusation Against: **ALBERT JOSEPH DIVITTORIO, JR., M.D.** **1008 Fowler Way Ste. A** **Placerville, CA 95667** **Physician's and Surgeon's Certificate No. C 32238,** Respondent.	Case No. 800-2017-039416 **A C C U S A T I O N**

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 May 13, 1970, the Medical Board issued Physician's and Surgeon's Certificate No. C 32238 to Albert Joseph DiVittorio, Jr., M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times to the charges brought herein. Respondent's Physician's and Surgeon's Certificate expired on July 31, 2019, and is delinquent.

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JURISDICTION

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

4. Section 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.

STATUTORY PROVISIONS

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:
>
> (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.

6. 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.

FIRST CAUSE FOR DISCIPLINE
(Gross Negligence)

7. Respondent has subjected his Physician's and Surgeon's Certificate No. C 32238 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that Respondent committed gross negligence in his care and treatment of Patients A[1], and B, as more particularly alleged hereinafter:

8. Respondent is a physician and surgeon who during the time alleged herein practiced at Marshall Medical Center, Placerville, California.

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[1] To protect the privacy of the patients involved, the patient names have not been included in this pleading.

Patient A

9. Patient A was a 65-year-old male who was initially seen in Marshall Medical Center in November 2016. Patient A at the time, presented with acute non-ST elevation myocardial infarction. He was transferred to Sutter Medical Center after initial medical stabilization and underwent coronary angiography on November 9, 2016. He was noted to have an occluded mid left anterior descending artery which was stented with a 2.5 x 20 mm Synergy drug-eluting stent. He was placed on Brilinta[2] and aspirin after the stent placement. Patient A was obese, and had a history of stroke and sleep apnea. He had a history of bariatric surgery and reversal. He had a congenital absence of one kidney. He presented in February and June of 2017 with gastrointestinal bleeding. In February of 2017, Patient A's CT scan revealed a pancreatic mass.

10. On or about May 22, 2017, Patient A was seen by another provider in Marshall Medical Center. The plan, from the coronary artery stent point, was to continue the dual antiplatelet therapy for at least 6 months, ideally one year. It was decided to wait until November for surgical intervention of the pancreatic mass.

11. Respondent decided to move the surgery three months early. Respondent failed to consult with Cardiology involving the surgery. Respondent failed to determine if it was acceptable to stop the dual antiplatelet therapy. Respondent failed to document his justification as to why surgery was needed to be performed earlier.

12. On or about August 10, 2017, Patient A was admitted in Marshall Medical Center. Respondent documented that Patient A was admitted for resection of the pancreatic tumor. Respondent's plan was to explore and resection the spleen and tail of the pancreas. The mass in the tail of the pancreas was hypermetabolic and measured about 4.5 x 3.5 cm. Respondent documented that Patient A understands and consents to the procedure.

13. On or about August 11, 2017, Patient A was put under anesthesia and Respondent started the surgery. Respondent had to abort the procedure. Respondent documented that Patient A had taken his anticoagulants so the surgery was postponed. Respondent documented that

[2] Brilinta, generic name ticagrelor, is a blood thinner used to prevent stroke, heart attack and other heart problems.

"[Patient A] was overall doing well. He is ambulatory. He is tolerating his diet. Dressing is removed. The wound looks good. We will also remove his epidural today." Respondent failed to determine whether the Brilinta had been stopped within an adequate time before surgery.

14. On or about August 13, 2017, Respondent documented that "[Patient A] was afebrile. Vital signs are stable. He is ready for surgery tomorrow. His Brilinta has been discontinued 5 days."

15. On or about August 14, 2017, Respondent performed a distal pancreatectomy and splenectomy procedure. The preoperative diagnosis was carcinoma of the pancreas. Patient A's transverse colon was injured during surgery. Estimated blood loss was 1800 ml. Postoperatively, Respondent documented that Patient A was returned to the intensive care unit. Patient A required considerable amounts of fluid replacement including blood, platelets and frozen plasma. He had low urine output, and his creatinine was elevated from 1.2 to 2.42. Respondent failed to consult with cardiology. Respondent failed to obtain cardiac enzymes and an electrocardiogram. Respondent failed to perform a cardiac workup the evening after surgery.

16. On or about August 15, 2017, Respondent documented that:

"[Patient A] has received extensive support throughout the night, and at this point is on both Levophed and vasopressin without adequate blood pressure. He has had essentially no urine output. Central venous pressure (CVP) was in the range of 16. His blood gases have shown some degree of acidosis. The fluid from his drainage is essentially serous. It does have a high amylase content. At this point it is my sense that this patient does not have the cardiac support to get through this event. I have discussed that issue with his family and they are all in agreement that further efforts to maintain will be futile and that withdrawal of support to minimize his suffering is appropriate. On that basis, I will discontinue the pressors, have him extubated, and allow him to pass quietly."

17. Respondent committed gross negligence in his care and treatment of Patient A which included, but was not limited to the following:

A. Respondent performed surgery within one year of the coronary intervention without obtaining cardiac clearance.

B. Respondent placed Patient A under general anesthesia and later aborted the procedure, because he failed to determine whether Patient A had stopped Brilinta prior to the procedure.

C. Respondent failed to perform a cardiac workup the evening after the surgery when Patient A was not doing well, and failed to consult with cardiology.

Patient B

18. Patient B was an 82-year-old female who presented to Marshall Medical Center in January 25, 2016. Patient B presented with weakness and abdominal discomfort. She complained of upper abdominal pain for several days. She had a prior history of hypertension (not on current therapy), diverticulosis, colonic polyps, polymyalgia rheumatica, hyperlipidemia, benign paroxysmal positional vertigo, previous stroke, mild cognitive impairment, degenerative disease of the hips and back, and a history of melanomas. At the time of admission, Patient B was noted to have a hemoglobin of 6 g/dl and iron deficiency anemia. Subsequent evaluation included a colonoscopy which demonstrated right sided colon cancer which was the cause of the anemia.

19. On or about January 29, 2016, Respondent performed a right colon resection procedure on Patient B. Respondent documented: "[Patient B] had a considerable amount of adhesions from previous surgical procedures. Some time was taken taking down the adhesions." Respondent palpated the tumor in the cecum. Respondent "selected a site about 6 inches proximal to the ilieocecal valve and cleared it of mesentery and fatty tissue with ILA stapling device fired across it. The entire right colon was mobilized and a site for division was selected in the area of the right transverse colon. The ILA stapling device was fired across it. At this point, the intervening mesentery was systematically dissected free, clamped, divided and ligated." After completing the right colectomy, Respondent documented that the patient tolerated the procedure well.

20. On or about January 31, 2016, Respondent saw Patient B for a follow up after the surgical procedure. In his progress note, Respondent documented that "Patient B's urine output was low the previous night, and another physician was called who ordered a bolus." Respondent

also documented that "Patient B's white count was 19,000, and an x-ray revealed some decreased ventilation and a fair amount of subdiaphragmatic air."

21. On or about February 1, 2016, Respondent documented that Patient B was afebrile. Patient B still had poor urine output despite administration of fairly large amounts of fluid. Respondent also documented "at this point, I do not think there is any problem with leakage or sepsis, but I will continue to follow her closely."

22. On or about February 3, 2016, Respondent documented that Patient B was afebrile. Respondent added that Patient B was obtunded. Despite a fairly large amount of fluids, she still had limited urine output. Respondent failed to recognize a bowel leak. Respondent failed to adequately document Patient B's abdominal examination.

23. On or about February 4, 2016, Patient B was afebrile and has significant tachycardia. Patient B continued to have "low urine which was not consistent with the amount of fluid she has on board."

24. On or about February 6, 2016, Respondent documented that Patient B remained in guarded condition. Patient B had leukocytosis with a significant white count of 22,000. She developed an ileus that required a nasogastric tube. Her x-ray revealed a significant amount of free air. She was also jaundiced.

25. On or about February 7, 2016, Respondent documented that Patient B continued to have significant respiratory distress and leukocytosis. A CT scan was ordered and revealed a significant amount of intra-abdominal fluid and increased free air.

26. On or about February 7, 2016, Patient B was taken back to the operating room. Respondent performed an exploratory laparotomy with small bowel resection and repair of anastomic leak. There were areas of small bowel that had leaks where the adhesions had been taken down. The anastomosis was also leaking and was repaired primarily. The small bowel leaks were resected and the bowel was anastomosed.

27. In the following days, Patient B did poorly and had a progressive decline of her respiratory, renal and neurologic function. She was extubated and subsequently died.

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28. Respondent committed gross negligence in his care and treatment of Patient A which included, but was not limited to the following:

A. Respondent failed to identify the bowel leak.

B. Respondent failed to adequately document Patient B's abdominal exam.

SECOND CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

29. Respondent has further subjected his Physician's and Surgeon's Certificate No. C 32238 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and treatment of Patients A, B, and C, as more particularly alleged hereinafter. The circumstances are set forth in paragraphs 7 through 28, above, which are hereby incorporated by reference and realleged as if fully set forth herein. Additional circumstances are as follows:

Patient C

30. Patient C was a 60-year-old male with a history of paraplegia. He presented with a decubitus ulcer. While he was admitted, he was found to have acute cholecystitis. He was taken to surgery on April 13, 2017 for diverting colostomy and cholecystectomy. The cystic duct was identified at the junction of the common bile duct. Postoperatively, he had an ileus and developed jaundice. He had a hepatobiliary iminodiacetic acid (HIDA) scan and endoscopic retrograde cholangiopancreatograph (ERCP) that confirmed a common bile duct injury. He was subsequently transferred to UC Davis.

31. Respondent departed from the standard of care in that the common bile duct injury was a result of dissection of the cystic duct, too close to the common duct.

THIRD CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Medical Records)

32. Respondent has further subjected his Physician's and Surgeon's Certificate No. C 32238 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate medical records in the care and

treatment of Patient A, as more particularly alleged in paragraphs 7 through 31, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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 No. C 32238, issued to Albert Joseph DiVittorio, Jr., M.D.;

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

3. Ordering Albert Joseph DiVittorio, Jr., 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: September 6, 2019

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

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