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

In the Matter of the Accusation Against Barton Tanenbaum, M.D. Physician's and Surgeon's Certificate No. G 19250, Respondent.	Case No. 800-2019-052906

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 March 5, 2021.

IT IS SO ORDERED February 26, 2021.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
CHRISTINA SEIN GOOT
Deputy Attorney General
State Bar No. 229094
California Department of Justice
300 South 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: BARTON TANENBAUM, M.D. 1127 Wilshire Blvd., Suite 805 Los Angeles, CA 90017-3909 Physician's and Surgeon's Certificate No. G 19250, Respondent.	Case No. 800-2019-052906 **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 California, by Christina Sein Goot, Deputy Attorney General.

2. Barton Tanenbaum, M.D. (Respondent) is represented in this proceeding by attorney Mark B. Guterman, whose address is: 865 South Figueroa Street, 32nd Floor, Los Angeles, CA 90017.

3. On or about September 28, 1970, the Board issued Physician's and Surgeon's Certificate No. G 19250 to Respondent. That Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2019-052906 and will expire on November 30, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2019-052906 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 October 27, 2020. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2019-052906 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. 800-2019-052906. 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 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. 800-2019-052906, agrees that he has thereby subjected his license to disciplinary action and hereby surrenders his Physician's and Surgeon's Certificate No. A 37798 for the Board's formal

acceptance.

9. 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.

CONTINGENCY

10. 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.

11. 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.

12. 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. G 19250, issued to Respondent Barton Tanenbaum, 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. 800-2019-052906 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. 800-2019-052906 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 Mark B. Guterman. 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: 2/4/21

BARTON TANENBAUM, M.D.
Respondent

I have read and fully discussed with Respondent Barton Tanenbaum, 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: 2/3/21

MARK B. GUTERMAN
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: 02/18/2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

CHRISTINA SEIN GOOT
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2019-052906

XAVIER BECERRA
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BEFORE THE
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In the Matter of the Accusation Against: BARTON TANENBAUM, M.D. 1127 Wilshire Blvd., Suite 805 Los Angeles, CA 90017-3909 Physician's and Surgeon's Certificate No. G 19250, Respondent.	Case No. 800-2019-052906 **ACCUSATION**

PARTIES

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

2. On September 28, 1970, the Board issued Physician's and Surgeon's Certificate Number G 19250 to Barton Tanenbaum, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2021, unless renewed.

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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 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 2228.1 of the Code states:

> (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:
>
> (1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:
>
> (A) The commission of any act of sexual abuse, misconduct, or relations with a patient or client as defined in Section 726 or 729.
>
> (B) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.
>
> (C) Criminal conviction directly involving harm to patient health.
>
> (D) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.
>
> (2) An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendre or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.
>
> (b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site:

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) Section 2314 shall not apply to this section.

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 726 of the Code states:

(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this or under any initiative act referred to in this division.

(b) This section shall not apply to consensual sexual contact between a licensee and his or her spouse or person in an equivalent domestic relationship when that licensee provides medical treatment, to his or her spouse or person in an equivalent domestic relationship.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent's license is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he committed gross negligence in his care and treatment of Patient 1.[1] The circumstances are as follows:

9. At all times relevant to the allegations herein, Respondent was a licensed physician and surgeon practicing as an urologist.

10. Patient 1, then a 46-year-old male, was referred to Respondent by his primary care physician for kidney issues. On January 22, 2019, Patient 1 first presented to Respondent. Patient 1 requested a Korean translator, however, Respondent denied the request and stated that Patient 1's English was good. When taking a history, Respondent asked questions regarding

[1] The patient is referred to by number to protect his privacy.

Patient 1's dating activity and frequency of masturbation that Patient 1 felt were inappropriate.

11. During the visit, Respondent hugged Patient 1 multiple times and whispered multiple times, "Asian people love hugs," or similar words to that effect. Respondent also caressed Patient 1's face. After Patient 1 lay down on his back on the examination table, Respondent unbuttoned and pulled down Patient 1's pants without warning or explanation. Respondent then stroked Patient 1's penis with his bare hands and asked him how it felt.

12. Patient 1 was subsequently sent to the waiting room for approximately 15 minutes. Respondent was escorted back to the examination room by a nurse who then left. When Respondent entered the examination room, he repeated "Asian people love hugs," and began caressing Patient 1's face. Respondent hugged Patient 1 and asked him to hug back harder. Respondent touched Patient 1's hip and buttock underneath his pants and underwear with his bare hand. Respondent then turned Patient 1 around so his back was facing Respondent, placed his bare right hand inside the front of Patient 1's pants and underwear, and groped his penis. Respondent turned Patient 1 around again and kissed him on the lips, placing his tongue inside Patient 1's mouth.

13. Respondent told Patient 1 to return in 2 weeks. Patient 1 did not return to Respondent's office.

14. When taking a history of a patient, the standard of care calls for accurate communication in order to provide appropriate care to the patient. Respondent's failure to use an interpreter was an extreme departure from the standard of care.

15. When performing a physical examination, it is the standard of care to be respectful, especially when the examination requires touching of the genital area. It was inappropriate for Respondent to hug, kiss, and fondle Patient 1. Respondent's inappropriate touching of Patient 1 was an extreme departure from the standard of care.

16. Respondent's acts and/or omissions as set forth in paragraphs 9 through 15, inclusive, 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

(Repeated Negligent Acts)

17. Respondent's license is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he committed repeated negligent acts in his care and treatment of Patient 1. The circumstances are as follows:

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

THIRD CAUSE FOR DISCIPLINE

(Sexual Misconduct with a Patient)

19. Respondent's license is subject to disciplinary action under section 726 of the Code in that he committed sexual misconduct with Patient 1. The circumstances are as follows:

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

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

21. Respondent's license is subject to disciplinary action under section 2234 of the Code in that he committed unprofessional conduct in his care and treatment of Patient 1. The circumstances are as follows:

22. The allegations of the First Cause for Discipline are incorporated by reference 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 Number G 19250, issued to Barton Tanenbaum, M.D.;

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

3. If placed on probation, ordering Barton Tanenbaum, M.D. to pay the Board the costs

of probation monitoring and to disclose the disciplinary order to patients pursuant to section 2228.1 of the Code; and

4. Taking such other and further action as deemed necessary and proper.

DATED: OCT 27 2020

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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