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

In the Matter of the Accusation Against: Gerald Hla Myint, M.D. Physician's and Surgeon's Certificate No. A 96837 Respondent.	Case No. 800-2019-055112

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 12, 2021.

IT IS SO ORDERED March 5, 2021.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
REBECCA D. WAGNER
Deputy Attorney General
State Bar No. 165468
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3760
Facsimile: (415) 703-5480
E-mail: Rebecca.Wagner@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against: **GERALD HLA MYINT, M.D.** **27206 Calaroga Ave.** **Hayward CA 94545-4300** **Physician's and Surgeon's Certificate No. A 96837** Respondent.	Case No. 800-2019-055112 **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 D. Wagner, Deputy Attorney General.

2. Gerald Hla Myint, M.D. (Respondent) is represented in this proceeding by attorney Cyrus A. Tabari, whose address is: Sheuerman, Martini, Tabari, Zenere & Garvin, 1033 Willow St., San Jose, CA 95125.

3. On or about August 11, 2006, the Board issued Physician's and Surgeon's Certificate No. A 96837 to Gerald Hla Myint, 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. 800-2019-055112 and will expire on February 28, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2019-055112 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 25, 2020. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2019-055112 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. 800-2019-055112. 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. 800-2019-055112, 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 96837, issued to Respondent Gerald Hla Myint, 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. 800-2019-055112 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. 800-2019-055112 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 Cyrus A. Tabari. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of

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License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 02/05/2021

GERALD HLA MYINT, M.D.
Respondent

I have read and fully discussed with Respondent Gerald Hla Myint, 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: 2/11/2021

CYRUS A. TABARI
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: February 16, 2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

Rebecca D. Wagner

REBECCA D. WAGNER
Deputy Attorney General
Attorneys for Complainant

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Gerald Hla Myint, M.D.Stipulated Surrender of License and Order

Exhibit A

Accusation No. 800-2019-055112

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
REBECCA D. WAGNER
Deputy Attorney General
State Bar No. 165468
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3760
Facsimile: (415) 703-5480
E-mail: Rebecca.Wagner@doj.ca.gov
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
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STATE OF CALIFORNIA

In the Matter of the Accusation Against: **Gerald Hla Myint, M.D.** **27206 Calaroga Ave.** **Hayward, CA 94545-4300** **Physician's and Surgeon's Certificate No. A 96837,** Respondent.	Case No. 800-2019-055112 **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 or about August 11, 2006, the Medical Board issued Physician's and Surgeon's Certificate Number A 96837 to Gerald Hla Myint, 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 February 28, 2022, 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 license revoked or suspended for a period not to exceed one year, be placed on probation and required to pay the costs of probation monitoring or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(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.

"..."

"(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.

"..."

6. Section 2228.1(a)(1)(A) of the Code provides that the Board shall require a licensee to provide a separate disclosure to patients 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 before the patient's first visit in any final adjudication by the Board establishing the commission of any act of sexual abuse or misconduct as defined in sections 726 of the Code.

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7. Section 726 of the Code provides that 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.

ADDITIONAL STATUTORY AUTHORITY

8. Section 632(a) of the Penal Code provides that a person who, intentionally and without the consent of all the parties to a confidential communication, uses an electronic amplifying or recording device to eavesdrop upon or record a confidential communication is guilty of a crime. Section 632(c) of the Penal Code defines a "confidential communication" as any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto.

9. Section 647(j)(1) of the Penal Code provides that any person who views, by means of an instrumentality, including, but not limited to a camera, motion picture camera, camcorder, mobile phone, or electronic device the interior of any area where the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of the person inside, is guilty of a misdemeanor.

10. 647(j)(2) of the Penal Code provides that any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph or record by electronic means, another identifiable person under or through the clothing being worn by that person for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions or sexual desires of that person and invades the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy is guilty of a misdemeanor.

11. Section 647(j)(3)(A) of the Penal Code provides that a person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, an identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of any area

where that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person is guilty of a misdemeanor.

12. Section 311.11 of the Penal Code provides that every person who knowingly possesses any data or image, including, but not limited to, any film, photograph, photocopy, videotape, data storage media, or computer-generated image which involves the use of a person under 18 years of age, knowing, that the matter depicts a person under 18 years of age personally engaging in or simulating sexual conduct is guilty of a felony.

FACTUAL ALLEGATIONS

13. Respondent is a general practitioner treating adult patients who, beginning in 2007, worked first at California Cardiovascular Consultants (CCC) which was then divided into a separate business, East Bay Cardiovascular (EBC), where he worked thereafter.

14. On February 13, 2019, Respondent was interviewed by the Federal Bureau of Investigation (FBI). During the interview, unrelated to the FBI investigation[1], Respondent admitted that he had created and maintained videos and pictures of his female staff, coworkers, and patients for his pleasure. Initially, however, he lied to the federal agents: claiming he filmed his employees to see if they were busy and his patients to avoid liability for possible misconduct claims. Respondent admitted he never asked permission from his female staff or patients to photograph or videotape them, and that he never videotaped or photographed his male patients.

15. Respondent described in detail that, for approximately a year, he placed his phone in his shirt pocket with the camera facing outwards and started the video before entering the treatment room of his female patients. He admitted he took videos of women with a "nice shape" illustrating with his hands an hour-glass shape. He also eventually admitted lying that he took the videos for liability purposes.

16. Respondent also admitted to taking pictures of females in public places, without their knowledge or consent, because he liked the way they looked.

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[1] Respondent has subsequently been indicted on federal charges for violation of 42 U.S.C. § 1320a-7b(b)(2)(A) for illegally influencing patient referrals for federally funded health care through payments. *United States of America v. GERALD MYINT,* Case No. 19-71448, United States District Court, for the Northern District of California.

17. Respondent further admitted that he had received and viewed child pornography which was sent to him by his friends approximately two to three times a week for the past year, albeit he denied enjoying it and stated that he deleted those images. Respondent did, however, admit that he knew child pornography was illegal.

18. Respondent admitted that the videos and photos he took were so that he could view them later to bring himself pleasure.

19. The FBI provided a Board Investigator with a flash drive taken from Respondent's cell phone which contained approximately 18,500 pictures and approximately 1,766 videos with sound, most of which were pornography[2]. Three possible patients were identified from the images.

20. On January 10, 2020, Patient P-1[3] was interviewed and she stated that Respondent had been her primary care physician for many years, and that she had no concerns or complaints related to his care. Patient P-1 viewed images from Respondent's phone and confirmed that some videos and pictures were of her. She did not recall any recording device during exams, was not informed she was being recorded or photographed, and did not consent to being recorded or photographed.

21. On January 16, 2020, Patient P-2 was interviewed and said she saw Respondent only a few times for lower back and sciatica pain approximately one year prior. Patient P-2 viewed images from Respondent's phone and identified herself. Patient P-2 was stunned by the images. She was not informed she was being recorded or photographed, and said she never gave Respondent permission to videotape or photograph her.

22. On January 16, 2020, Patient P-3 was interviewed and said Respondent had been her primary care physician for many years. She confirmed images of herself and her children from Respondent's phone. Although she does not remember seeing any recording device on Respondent, she does remember him using his cell phone as a flashlight once during an office

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[2] Although Respondent admitted to possessing and viewing child pornography, none was located in the contents of the flash drive taken from his cell phone.

[3] In order to protect patient confidentiality and privacy, patients will be identified as Patients P-1 to P-3. Respondent knows who these patients are and, if not, can identify them through the discovery process.

visit and thought it unusual. Patient P-3 was never informed she and her children were being recorded or photographed, and she did not consent to being recorded or photographed.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Sexual Misconduct and Abuse)

23. Respondent is subject to disciplinary action under Section 2234 and/or 2234, subdivision (a) and/or subdivision (f) for Unprofessional Conduct and/or Section 726 of the Code in that he engaged in Sexual Misconduct and Sexual Abuse of Patients P-1, P-2, and P-3, as outlined above in Paragraphs 14 through 22. Respondent, by photographing and videotaping his patients during their exams, without their knowledge or consent, for his own later sexual pleasure, exploited his patients for his own gratification and has committed Unprofessional Conduct and/or Sexual Misconduct and Abuse, and his conduct is cause for discipline pursuant to sections 2234 and/or 2234(a) and/or (f) and/or 726 of the Code.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Lying to Federal Agents)

24. Respondent is subject to disciplinary action for Unprofessional Conduct under Section 2234 and/or section 2234, subdivision (a) and/or subdivision (e) and/or subdivision (f) in that he lied to federal agents during the course of a criminal investigation, as outlined above in Paragraphs 14 through 22. Respondent, by lying to the FBI and claiming to film and photograph his patients to protect against liability, and his employees to ensure they were working, when instead he did so to pleasure himself, has committed Unprofessional Conduct, and his conduct is cause for discipline pursuant to sections 2234 and/or 2234(a) and/or 2234(e) and/or 2234 (f) of the Code.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Privacy Act Violations, Recording Confidential Communications)

25. Respondent is subject to disciplinary action for Unprofessional Conduct under Sections 2234 and/or 2234, subdivision (a) and/or subdivision (f) of the Code (Unprofessional Conduct). Respondent abused his position as a physician and surgeon to violate numerous

provisions of law including: section 632(a) of the Penal Code (Recording Confidential Communications) and/or section 647(j)(1)-(3)(A) of the Penal Code (Privacy Act Violations) in that he recorded the confidential communications of his patients and/or their physical exams for his sexual interest, as outlined above in Paragraphs 14 through 22.

FOURTH CAUSE OF DISCIPLINE

(Unprofessional Conduct: Possession of Child Pornography)

26. Respondent is subject to disciplinary action under Section 2234 and/or 2234, subdivision (a) and/or subdivision (f) of the Code (Unprofessional Conduct). He demonstrated unprofessional conduct and unfitness to practice by his violation of section 311.11 of the Penal Code (Possession of Child Pornography) in that he viewed child pornography on multiple occasions as outlined in Paragraph 17, above.

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 96837, issued to Gerald Hla Myint, M.D.;

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

3. Ordering Gerald Hla Myint, M.D., if placed on probation, to pay the Board the costs of probation monitoring;

4. Ordering Gerald Hla Myint, M.D., if placed on probation and found to have committed any act of sexual abuse or misconduct to provide patient disclosure pursuant to Section 2228.1(a)(1)(A) of the Code: and

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

DATED: JUN 25 2020

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

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