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

In the Matter of the First Amended Accusation Against: Kenny C. Win, M.D. Physician's and Surgeon's Certificate No. A 54498 Respondent.	Case No. 800-2018-044106

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 19, 2021.

IT IS SO ORDERED March 12, 2021.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
LEANNA E. SHIELDS
Deputy Attorney General
State Bar No. 239872
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9401
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **KENNY C. WIN, M.D.** 5434 El Monte Avenue Temple City, CA 91780 **Physician's and Surgeon's Certificate No. A 54498,** Respondent.	Case No. 800-2018-044106 OAH No. 2020090842 **STIPULATED SURRENDER OF LICENSE 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 (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 LeAnna E. Shields, Deputy Attorney General.

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2. Respondent Kenny C. Win, M.D. (Respondent) is represented in this proceeding by attorney Kent T. Brandmeyer, Esq., whose address is 2 North Lake Avenue, Suite 820, Pasadena, CA 91101.

3. On or about August 9, 1995, the Board issued Physician's and Surgeon's Certificate No. A 54498 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in the First Amended Accusation No. 800-2018-044106, and will expire on December 31, 2022, unless renewed.

JURISDICTION

4. On July 28, 2020, Accusation No. 800-2018-044106 was filed before the Board, and is currently pending against Respondent. On July 28, 2020, a true and correct copy of Accusation No. 800-2018-044106 and all other statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defense contesting the Accusation.

5. On March 3, 2021, the First Amended Accusation No. 800-2018-044106 was filed before the Board, and is currently pending against Respondent. A true and correct copy of the First Amended Accusation No. 800-2018-044106 was properly served on Respondent on March 3, 2021. A true and correct copy of the First Amended Accusation No. 800-2018-044106 is attached as Exhibit A and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in the First Amended Accusation No. 800-2018-044106. Respondent has also carefully read, fully discussed with his counsel, and fully understands the effects of this Stipulated Surrender of License 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 First Amended 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;

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and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Having the benefit of counsel, 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 each and every charge and allegation contained in the First Amended Accusation No. 800-2018-044106, and agrees that he has thereby subjected his Physician's and Surgeon's Certificate No. A 54498 to disciplinary action, and hereby surrenders his Physician's and Surgeon's Certificate No. A 54498 for the Board's formal acceptance.

9. Respondent agrees that if he files a petition for reinstatement or relicensure, or an accusation and/or petition to revoke probation is filed against him before the Medical Board of California, all of the charges and allegations contained in the First Amended Accusation No. 800-2018-044106 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.

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 No. A 54498 without notice to, or opportunity to be heard by, Respondent.

CONTINGENCY

12. Business and Professions Code section 2224, subdivision (b), provides, in pertinent part, that the Medical Board "shall delegate to its executive director the authority to adopt a ... stipulation for surrender of a license."

13. Respondent understands that, by signing this stipulation, he enables the Executive Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his Physician's and Surgeon's Certificate No. A 54498, without further notice to, or opportunity to be heard by, Respondent.

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14. This Stipulated Surrender of License and Disciplinary Order shall be subject to the approval of the Executive Director on behalf of the Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for his consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

15. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Executive Director on behalf of the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Executive Director on behalf of the Board does not, in his discretion, approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason by the Executive Director on behalf of the Board, Respondent will assert no claim that the Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

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ADDITIONAL PROVISIONS

16. This Stipulated Surrender of License and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

17. The parties agree that copies of this Stipulated Surrender of License and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

18. In consideration of the foregoing admissions and stipulations, the parties agree the Executive Director of the Board may, without further notice to or opportunity to be heard by Respondent, issue and enter the following Disciplinary Order on behalf of the Board:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 54498 issued to Respondent KENNY C. WIN, M.D., is hereby surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate No. A 54498 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 the First Amended Accusation No. 800-2018-044106 shall be deemed to be true, correct and fully 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 the First Amended Accusation, No. 800-2018-044106 shall be deemed to be true, correct, and fully 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 Disciplinary Order and have fully discussed it with my attorney, Kent T. Brandmeyer, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 54498. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 03-05-2021

KENNY C. WIN, M.D.
Respondent

I have read and fully discussed with Respondent Kenny C. Win, M.D., the terms and conditions and other matters contained in the above Stipulated Surrender of License and Disciplinary Order. I approve its form and content.

DATED: 03/05/201

KENT T. BRANDMEYER, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

DATED: March 5, 2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

LEANNA E. SHIELDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2018-044106

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
LEANNA E. SHIELDS
Deputy Attorney General
State Bar No. 239872
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9401
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **KENNY C. WIN, M.D.** **5434 El Monte Avenue** **Temple City, CA 91780-2829** **Physician's and Surgeon's Certificate No. A 54498,** Respondent.	Case No. 800-2018-044106 **FIRST AMENDED ACCUSATION**

PARTIES

1. William Prasifka (Complainant) brings this First Amended 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 9, 1995, the Medical Board issued Physician's and Surgeon's Certificate No. A 54498 to Kenny C. Win, 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 December 31, 2022, unless renewed.

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JURISDICTION

3. This First Amended Accusation, which supersedes the Accusation filed on July 28, 2020, 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:
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> (1) Have his or her license revoked upon order of the board.
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> (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.

5. Section 2234 of the Code, states, in pertinent part:

> 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:
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> (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.

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(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.

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

6. Respondent has subjected his Physician's and Surgeon's Certificate No. A 54498 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he has committed gross negligence in his care and treatment of Patient A[1], as more particularly alleged hereinafter.

7. On or about August 31, 2015, Patient A, a then 31-year old male, was admitted to Patton State Hospital (PSH) after a determination was made that he was incompetent to stand trial. Patient A's medical history was significant for, among other things, asthma, anxiety disorder, and schizophrenia. Upon admission, Patient A's medications included, among other things, Flovent[2], Singulair[3], and Xopenex.[4] Respondent was assigned as Patient A's medical physician during his admission at PSH.

8. On or about September 1, 2015, Respondent performed an initial patient assessment of Patient A. According to records, Respondent noted Patient A's medical history of asthma, but documented Patient A's asthma as not active and documented no wheezing detected. Respondent

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[1] Patient identity has been withheld for patient privacy purposes. Respondent is aware of the identity of the patient referred to herein.

[2] Flovent, brand name for fluticasone, is a corticosteroid used for the long-term treatment of asthma.

[3] Singulair, brand name for montelukast, is a leukotriene inhibitor, commonly used to treat asthma by preventing asthma attacks.

[4] Xopenex, brand name for levalbuterol, is a short-acting bronchodilator used to increase the airflow to the lungs, commonly used to treat or prevent bronchospasm.

then issued an order to continue Respondent's prescription for Xopenex, as needed. Respondent did not issue a renewal prescription for Flovent or Singulair, which were due to expire on September 7, 2015.

9. After the expiration of Patient A's prescriptions for Flovent and Singulair, PSH documents show an increase in Patient A's daily requests for his Xopenex inhaler.

10. On or about January 4, 2016, Respondent performed a quarterly review and assessment of Patient A. During this evaluation, Respondent documented Patient A had no complaints, his lungs were clear, and no wheezing in his lungs. Respondent noted Patient A was using his Xopenex inhaler daily, but documented the reason for the multiple requests was Respondent's anxiety and reported shortness of breath. Respondent continued prescribing Xopenex to Patient A, but did not add any other medications for asthma.

11. On or about January 24, 2016, Respondent evaluated Patient A, who presented with complaints of shortness of breath and wheezing. Respondent documented no shortness of breath, minimal inspiratory wheezing, and no expiratory wheezing. Respondent further documented no acute bronchial asthma wheezing since admission, but Patient A still made daily requests for his inhaler. Respondent then determined it was "mostly inhaler dependence."

12. On or about January 28, 2016, Respondent evaluated Patient A, who presented with wheezing. Respondent documented wheezing at Patient A's larynx area, but none at his lungs. Respondent documented a diagnosis of Acute Reactive Airway disease with signs of bronchospasm and prescribed Xopenex inhaler.

13. From on or about August 31, 2015, through on or about February 14, 2016, Patient A requested his Xopenex inhaler on a daily basis, multiple times per day. Patient A complained of shortness of breath and wheezing, and reported improved breathing after taking several puffs of his Xopenex inhaler.

14. At no time during Patient A's stay as PSH did Respondent issue a prescription to Patient A for Flovent or Singulair, or any equivalent or similar prescription for Flovent or Singulair, to renew these two medications for Patient A after their expiration on September 7, 2015.

15. At no time during Patient A's stay at PSH did Respondent order any objective testing to determine Patient A's respiratory status or to confirm the validity of Patient A's repeated requests for his Xopenex inhaler.

16. On or about February 14, 2016, Patient A complained of shortness of breath and by approximately 7:40 A.M., he had already used his inhaler once. After using his inhaler, Patient A continued to report feeling unable to breathe. Without performing an examination of Patient A, Respondent attributed Patient A's condition to his anxiety and transferred the care of Patient A to the incoming staff physician of the day, a psychiatrist, as Respondent's shift was ending. Later that same morning, Patient A was pronounced dead. The cause of death was determined to be acute and chronic bronchial asthma.

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

A. Paragraphs 6 through 16, above, are hereby incorporated by reference and realleged as if fully set forth herein;

B. Respondent failed to recognize and/or properly manage Patient A's acute asthma attack on February 14, 2016;

C. Respondent failed to take proper precautions in discontinuing Patient A's two asthma maintenance medications, Flovent and Singulair, by discontinuing both medications at the same time, and Respondent failed to restart Patient A's two asthma maintenance medications, or their equivalent, when indicated by Patient A's condition; and

D. Respondent failed to use step up therapy in the treatment and management of Patient A's asthma.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

18. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 54498 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he has committed repeated negligent acts in his care and treatment of Patient A, as more particularly alleged hereinafter.

A. Paragraphs 6 through 17, above, are hereby incorporated by reference and realleged as if fully set forth herein;

B. Respondent failed to order objective testing to assess Patient A's asthma and respiratory status, including but not limited to, peak expiratory flow rate and pulmonary function testing; and

C. Respondent failed to consider and/or document the consideration of other underlying causes of Patient A's anxiety other than mental illness, including the possibility of Patient A's inability to breathe.

THIRD CAUSE FOR DISCIPLINE

(Violations of Provisions of the Medical Practice Act)

19. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 54498 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, in that he violated a provision or provisions of the Medical Practice Act, as more particularly alleged in paragraphs 6 through 18, 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. A 54498, issued to Respondent Kenny C. Win, M.D.;

2. Revoking, suspending or denying approval of Respondent Kenny C. Win, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Kenny C. Win, 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: March 3, 2021

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

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