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

In the Matter of the Accusation Against: David Stanton Hodge, M.D. Physician's and Surgeon's Certificate No. G 39325 Respondent.	Case No. 800-2017-038350

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 April 1, 2021.

IT IS SO ORDERED March 25, 2021.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General
LYNETTE D. HECKER
Deputy Attorney General
State Bar No. 182198
California Department of Justice
2550 Mariposa Mall, Room 5090
Fresno, CA 93721
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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: **DAVID STANTON HODGE, M.D.** **P. O. Box 27500** **Fresno, CA 93729-7500** **Physician's and Surgeon's Certificate No. G 39325** Respondent.	Case No. 800-2017-038350 OAH No. 2019080845 **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 Lynette D. Hecker, Deputy Attorney General.

2. David Stanton Hodge, M.D. (Respondent) is represented in this proceeding by attorney Michael F. Ball, whose address is 7647 North Fresno Street, Fresno, CA 93720-8912.

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3. On or about May 29, 1979, the Board issued Physician's and Surgeon's Certificate No. G 39325 to David Stanton Hodge, 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. 800-2017-038350 and will expire on April 30, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-038350 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 August 5, 2019. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2017-038350 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. 800-2017-038350. 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. 800-2017-038350, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

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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.

CONTINGENCY

11. 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."

12. 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. C 15434 without further notice to, or opportunity to be heard by, Respondent.

13. 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.

14. 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.

ADDITIONAL PROVISIONS

15. 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.

16. 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.

17. 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. G 39325, issued to Respondent, David Stanton Hodge, 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 medicine 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. 800-2017-038350 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. 800-2017-038350 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, Michael F. Ball. 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: _____

_____
DAVID STANTON HODGE, M.D.
Respondent

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 medicine 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. 800-2017-038350 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. 800-2017-038350 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, Michael F. Ball. 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: 20 MAR 2021

David Stanton Hodge

DAVID STANTON HODGE, M.D.
Respondent

I have read and fully discussed with Respondent David Stanton Hodge, 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: _____

MICHAEL F. BALL
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: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

LYNETTE D. HECKER
Deputy Attorney General
Attorneys for Complainant

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I have read and fully discussed with Respondent David Stanton Hodge, 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: 3/21/2021

MICHAEL F. BALL
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: 3/22/2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

LYNETTE D. HECKER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-038350

XAVIER BECERRA
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2550 Mariposa Mall, Room 5090
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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: **DAVID STANTON HODGE, M.D.** P.O. Box 27500 Fresno, CA 93729-7500 **Physician's and Surgeon's Certificate No. G 39325,** Respondent.	Case No. 800-2017-038350 **ACCUSATION**

PARTIES

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

2. On or about May 29, 1979, the Medical Board issued Physician's and Surgeon's Certificate No. G 39325 to David Stanton Hodge, 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 April 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 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.

DEFINITIONS

7. Esophageal atresia is a congenital defect in which the esophagus fails to develop as a continuous passage. Instead, both the lower (distal) and upper (proximal) esophagus end in blind pouches. Treatment typically consists of a surgical repair to connect the two ends of the esophagus.

8. Tracheoesophageal fistula (TEF) is a congenital defect related to esophageal atresia, in which one or both ends of the esophagus connect to the trachea, rather than ending in a blind pouch.

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FACTUAL ALLEGATIONS

9. On or about May 22, 2017, Patient A[1] was born with esophageal atresia. The patient was delivered by urgent C-section, and Respondent performed immediate open gastrostomy placement to allow the patient to feed and grow pending a later surgery to correct the atresia.

10. On or about June 30, 2017, Respondent attempted a repair of the patient's esophageal atresia. However, the patient's upper esophageal pouch would not hold the sutures, and the repair could not be accomplished. Respondent closed the upper and lower ends of the esophagus and ended the attempted repair.

11. On or about July 17, 2017, an upper gastrointestinal contrast study (UGI) established that the patient had developed a fistulous connection between the distal and proximal esophageal pouches. On two occasions, Respondent consulted with another pediatric surgeon in Boston, Massachusetts, regarding his treatment of Patient A, but did not document this consultation. Based in part on this consultation, Respondent planned to continue to wait before attempting another surgery. Respondent continued to follow the patient with periodic UGI studies. On or about September 6, 2017, a UGI study established that the fistula had closed. This was confirmed by another UGI study on or about October 16, 2017.

12. On or about October 18, 2017, Respondent attempted again to perform a repair of the patient's esophageal atresia. Respondent did not have a preoperative conference with the attending anesthesiologist prior to the surgery, and only spoke to the anesthesiologist for the first time about the case on the morning of the surgery. Respondent did not arrange for assistance by a second surgeon. No arterial line was placed prior to incision. During the surgery, Respondent encountered dense adhesions from the lung to the chest wall, and adhesiolysis resulted in air leaks. An hour into the operation, Respondent noted a tracheal injury, which he repaired. Subsequently, a persistent air leak resulted in difficulties with ventilation. Respondent noted an injury to the left mainstem bronchus, and attempted a repair. The anesthesiologist suggested that Respondent obtain assistance from a second surgeon to perform this repair, but Respondent ignored the anesthesiologist's suggestion. Difficulty with ventilation continued, and eventually

[1] Patient names are redacted to protect privacy.

an oscillating ventilator was brought to the operating room. Despite these difficulties with ventilation and air leakage, Respondent proceeded to attempt to connect the upper and lower esophageal pouches. The patient became extremely unstable, and required epinephrine for resuscitation. Respondent abandoned the attempted esophageal repair and closed the chest, but the patient continued to deteriorate. Following additional interventions, the patient died.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

13. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code, in that he engaged in act(s) or omission(s) amounting to gross negligence. The circumstances are set forth in paragraphs 9 through 12, which are incorporated here by reference as if fully set forth. Additional circumstances are as follows:

14. The standard of care requires adequate preparation prior to performing surgery. A repeat thoracotomy and mediastinal dissection in the chest of an infant, whose postoperative course was complicated by a fistula formation, is a challenging surgery that requires preparation and communication between the anesthesiologist and surgeon. Such preparation and communication must occur sufficiently early so that problems can be anticipated and planned for. Respondent's failure to conduct a preoperative conference with the anesthesiologist prior to the October 18, 2017, surgery constitutes gross negligence. Respondent's failure to plan for surgical assistance, and instead relying upon the scrub tech to provide assistance during surgery, constitutes gross negligence.

15. The standard of care requires adequate communication between the surgeon and anesthesiologist during surgery. If the patient become unstable for any reason, the operation must cease until the anesthesiologist feels it is safe to proceed. Should additional monitoring become necessary during the operation, the surgeon must cease operating and assist in achieving necessary monitoring. During the October 18, 2017, surgery, the anesthesiologist repeatedly requested that Respondent momentarily cease operating to wait for the patient's oxygen saturation to return. Respondent ignored these requests. Despite hours of poor oxygenation and persistent instability, Respondent attempted to repair the esophageal atresia. Respondent's failure

to heed the requests of the anesthesiologist, and proceeding with the atresia repair despite the patient's instability, constitutes gross negligence.

16. Respondent's failure to obtain an assistant surgeon to assist in repairing the patient's left mainstem bronchus constitutes gross negligence.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

17. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code, in that he committed repeated acts of negligence. The circumstances are set forth in paragraphs 9 through 16, which are incorporated here by reference as if fully set forth. Additional circumstances are as follows:

18. The standard of care requires that consultations be documented. Respondent's failure to document his two consultations with a pediatric surgeon in Boston, Massachusetts, constitutes negligence.

THIRD CAUSE FOR DISCIPLINE

(Recordkeeping)

19. Respondent is subject to disciplinary action under section 2266 of the Code, in that he failed to maintain adequate and accurate records in the care and treatment of Patient A. The circumstances are set forth in paragraphs 9 through 18, which are incorporated here by reference as if fully set forth.

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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 39325, issued to David Stanton Hodge, M.D.;

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

3. Ordering David Stanton Hodge, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: August 5, 2019

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

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