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

In the Matter of the Accusation Against: Ebrahim Duel, M.D. Physician's and Surgeon's License No. A 33882 Respondent	Case No. 800-2019-054188

DECISION

The attached Stipulated Settlement and Disciplinary 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 July 2, 2021.

IT IS SO ORDERED: June 4, 2021.

MEDICAL BOARD OF CALIFORNIA

Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
REBECCA L. SMITH
Deputy Attorney General
State Bar No. 179733
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6475
Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Accusation Against: EBRAHIM DUEL, M.D. 301 North Main Street Santa Ana, CA 92701 Physician's and Surgeon's Certificate No. A 33882, Respondent.	Case No. 800-2019-054188 OAH No. 2020090417 **STIPULATED SETTLEMENT 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 Rebecca L. Smith, Deputy Attorney General.

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2. Respondent Ebrahim Duel, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, whose address is 5440 Trabuco Road, Irvine, CA 92620.

3. On or about June 5, 1979, the Board issued Physician's and Surgeon's Certificate No. A 33882 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2019-054188, and will expire on September 30, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2019-054188 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 17, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2019-054188 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2019-054188. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement 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 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.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2019-054188, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2019-054188, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. A 33882 to disciplinary action.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, 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 Settlement 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. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2019-054188 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.

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14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 33882 issued to Respondent EBRAHIM DUEL, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for one (1) year on the following terms and conditions:

1. EDUCATION COURSE. Within sixty (60) calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than forty (40) hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

2. MEDICAL RECORD KEEPING COURSE. Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the

Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than fifteen (15) calendar days after successfully completing the course, or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than fifteen (15) calendar days after successfully completing the program or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

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4. PROHIBITED PRACTICE. During probation, Respondent is prohibited from performing surgery as the primary surgeon. After the effective date of this Decision, all patients being treated by Respondent shall be notified that Respondent is prohibited from performing surgery as the primary surgeon. Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

6. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

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8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than ten (10) calendar days after the end of the preceding quarter.

9. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the dates of departure and return.

10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (15) calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or

Controlled Substances; and Biological Fluid Testing.

12. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than one-hundred twenty (120) calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

14. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

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16. FUTURE ADMISSIONS CLAUSE. 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 action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2019-054188 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 license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Raymond J. McMahon. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 3.12.2021

EBRAHIM DUEL, M.D.
Respondent

I have read and fully discussed with Respondent Ebrahim Duel, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: March 9, 2012

RAYMOND J. MCMAHON
Attorney for Respondent

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Mar. 8. 2021 4:05PM No. 1211 P. 10

ENDORSEMENT

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

DATED: 3/18/2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

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Mar. 8. 2021 4:05PM No. 1211 P. 11

Exhibit A

Accusation No. 800-2019-054188

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
REBECCA L. SMITH
Deputy Attorney General
State Bar No. 179733
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 269-6475
Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Accusation Against:	Case No. 800-2019-054188
Ebrahim Duel, M.D. **301 North Main Street** **Santa Ana, CA 92701** Physician's and Surgeon's Certificate No. A 33882, Respondent.	**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 June 5, 1979, the Medical Board issued Physician's and Surgeon's Certificate Number A 33882 to Ebrahim Duel, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2022, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following provisions of the California Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2004 of the Code states:

The board shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

(f) Approving undergraduate and graduate medical education programs.

(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

(h) Issuing licenses and certificates under the board's jurisdiction.

(i) Administering the board's continuing medical education program.

5. 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.

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 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.

8. California Code of Regulations, title 22, section 70707.3, states:

(a) An individual has given informed consent only if:

(1) The person who obtained consent for the sterilization procedure:

(A) Offered to answer any questions the individual to be sterilized may have concerning the procedure.

(B) Provided the individual with a copy of the consent form and the booklet on sterilization published by the Department.

(C) Provided orally all of the following to the individual to be sterilized:

1. Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled.

2. A full description of available alternative methods of family planning and birth control.

3. Advice that the sterilization procedure is considered to be irreversible.

4. A thorough explanation of the specific sterilization procedure to be performed.

5. A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used.

6. A full description of the benefits or advantages that may be expected as a result of the sterilization.

7. Approximate length of hospital stay.

8. Approximate length of time for recovery.

9. Financial cost to the patient.

10. Information that the procedure is established or new.

11. Advice that the sterilization will not be performed for at least 30 days, except under the circumstances specified in Section 70707.1.

12. The name of the physician performing the procedure. If another physician is to be substituted, the patient shall be notified, prior to administering pre-anesthetic medication of the physician's name and the reason for the change in physician.

(2) Suitable arrangements were made to ensure that the information specified in (a)(1) was effectively communicated to any individual who is blind, deaf, or otherwise handicapped.

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(3) An interpreter was provided if the individual to be sterilized did not understand the language used on the consent form or the language used by the person obtaining consent.

(4) The individual to be sterilized was permitted to have a witness of the individual's choice present when consent was obtained.

(5) The sterilization operation was requested without fraud, duress, or undue influence.

(6) The consent form requirements of Section 70707.4 were met.

(b) Informed consent may not be obtained while the individual to be sterilized is:

(1) In labor or within 24 hours postpartum or postabortion.

(2) Seeking to obtain or obtaining an abortion.

(A) Seeking to obtain means that period of time during which the abortion decision and the arrangement for the abortion are being made.

(B) Obtaining an abortion means that period of time during which the individual is undergoing the abortion procedure, including any period during which preoperative medication is administered.

(3) Under the influence of alcohol or other substances that affect the individual's state of awareness.

(c) The informed consent process may be conducted either by a physician or by the physician's designee.

(d) A copy of the signed consent form shall be:

(1) Provided to the patient.

(2) Retained by the physician and the hospital in the patient's medical records.

(e) No person shall by reason of mental retardation alone be prevented from consenting to sterilization under this section.

FACTUAL ALLEGATIONS

9. Patient 1,[1] a then 26-year-old prima gravida, began seeing Respondent for prenatal care on May 16, 2017, at 33-weeks' gestation. She had previously received prenatal care at another clinic. Her estimated delivery date was July 7, 2017. She had a large right ovarian cyst,

[1] For privacy purposes, the patient in this Accusation is referred to as Patient 1.

which upon ultrasound examination was noted to be 9 cm. The cyst was monitored throughout the pregnancy, which was otherwise uncomplicated.

10. Respondent's office chart contains a handwritten note dated June 5, 2017, by Patient 1 requesting an elective cesarean section and removal of her right ovarian cyst.

11. On July 11, 2017, Patient 1 was admitted to Orange County Global Medical Center ("the hospital") at 39-weeks' gestation for an elective primary cesarean section with removal of the right ovarian cyst. Respondent issued a telephone order to the nursing staff to obtain consent for a primary cesarean section and right ovarian cystectomy with possible oophorectomy. The patient executed a hospital consent form reflecting that she would be undergoing cesarean section and right ovarian cyst removal.

12. In his history and physical form, dated July 11, 2017, Respondent noted that the patient desired sterilization and that his treatment plan was cesarean section and removal of the ovarian cyst with possible oophorectomy and bilateral tubal ligation. Respondent checked the preprinted informed consent box attesting that he had discussed the recommended procedure with the patient, including the risks and benefits.[2]

13. On July 11, 2017, Patient 1 delivered a healthy male infant weighing 9 pounds and 12 ounces. Respondent repaired Patient 1's uterus, removed the right ovarian cyst and then proceeded to remove the left fallopian tube. At that time, anesthesiologist, Dr. C.C., stopped Respondent and questioned the performance of the sterilization procedure. The patient's consent was then re-examined. Thereafter, Respondent completed surgery without removing the right fallopian tube.

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[2] Respondent later explained that he had prepared Patient 1's history and physical report in his office on July 10, 2017, setting forth that the patient was to undergo an elective cesarean section and right ovarian cyst removal. On July 11, 2017, while Respondent was caring for another patient who was to undergo a tubal ligation, a nurse reported to him that he did not have a history and physical report in Patient 1's chart. Respondent then prepared a new history and physical report for Patient 1 setting forth that she desired bilateral tubal ligation because he mixed up the two patients.

14. Respondent's operative report failed to document the intraoperative findings or detail the procedures performed.[3] There was no notation of the unusual occurrence of the case (i.e., the surgical error in removing the patient's left fallopian tube). Respondent documented that both transverse and vertical incisions were made during the procedure. He failed to describe the left fallopian tube and its condition. He failed to describe the manner in which he removed the right ovarian cyst, the means by which the bleeding of the ovary was stopped and whether suture closure of the ovary was necessary. He failed to describe the condition of the remainder of the pelvis. Further, Respondent did not indicate whether any prophylactic measures were taken to mitigate the risks of the patient subsequently developing pelvic adhesions.

15. On July 12, 2017, Respondent examined the patient and then discussed the cesarean section, right ovarian cyst removal and removal of the left fallopian tube with the patient and her husband. On July 14, 2017, the patient and her husband later had more questions about the surgical procedure and Respondent told them that he had accidently removed the left fallopian tube. Patient 1's post-operative course was otherwise unremarkable and she was discharged on July 14, 2017.

16. Patient 1 returned to Respondent's office for a routine post-operative visit on July 18, 2017. At that time, Respondent again told the patient that he had accidently removed the left fallopian tube. Respondent also told the patient that since she had a cesarean section and removal of a right ovarian cyst, she could develop adhesions which may affect her ability to conceive in the future.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

17. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code, in that he engaged in gross negligence by initiating a reproductive sterilization procedure and removing Patient 1's left fallopian tube without consent, in violation of California Code of Regulations, title 22, section 70707.3. Complainant refers to and, by this reference,

[3] Respondent's pre-operative diagnosis was voluntary cesarean section at 39-weeks gestation and right ovarian cyst. His post-operative diagnosis was "same and left salpingectomy."

incorporates herein, paragraphs 9 through 16, above, as though fully set forth herein. The circumstances are as follows:

18. The standard of care requires that the surgeon participate in a surgical "time out" prior to commencing surgery, whereby the patient's identity is confirmed, all of the procedures to be performed are listed, the precise locations of the procedures are marked and any complicating factors that may exist are identified. The surgeon must then confirm that the time out is consistent with the patient's signed consent form. The procedures to be performed are restricted by the consent form and the consent cannot be altered during surgery other than in the face of a life-threatening emergency. The surgical time out assists in avoiding surgical errors, in the form of incorrect or "wrong-sided" procedures.

19. The standard of care requires that an obstetrician obtain informed consent, both oral and written, from a patient requesting an elective reproductive sterilization procedure and comply with State regulations, which mandate special informed consent requirements for elective reproductive sterilizations.

20. Respondent failed to obtain informed consent from Patient 1 to initiate an elective reproductive sterilization procedure. Respondent failed to ascertain during the surgical time-out prior to Patient 1's surgery that her consent was limited to an elective cesarean section and removal of the right ovarian cyst and that there was no consent for sterilization. While the nursing staff involved in the surgical time out should have identified the consent error, it was Respondent's responsibility, as Patient 1's surgeon, to recognize the error. It was an extreme departure from the standard of care for Respondent to initiate a sterilization procedure and remove Patient 1's left fallopian tube.

21. Respondent's acts and/or omissions as set forth in paragraphs 9 through 20, 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.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

22. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he committed repeated negligent acts with respect to his care and treatment of Patient 1. Complainant refers to and, by this reference, incorporates herein, paragraphs 9 through 20 above, as though fully set forth herein.

23. Respondent failed to obtain informed consent from Patient 1 to initiate an elective reproductive sterilization procedure. Respondent failed to ascertain during the surgical time-out prior to Patient 1's surgery that her consent was limited to an elective cesarean section and removal of the right ovarian cyst and that there was no consent for sterilization. While the nursing staff involved in the surgical time out should have identified the consent error, it was Respondent's responsibility, as Patient 1's surgeon, to recognize the error.

24. The standard of care requires that an obstetrician obtain informed consent when recommending a surgical procedure to a patient. This includes informing the patient of the risks, benefits, alternative treatments available, as well as the repercussions of undergoing surgery and that the patient is able to verbalize her understanding of the procedure.

25. Respondent failed to document any discussion with Patient 1 of the risks, benefits, and alternative treatment options for undergoing an elective cesarean section and right ovarian cyst removal, which should have included: the risks and benefits of vaginal delivery or a trial of labor, the risks and benefits of expectant management of the ovarian cyst; the repercussions of an ovarian cystectomy or the possibility of an oophorectomy; the inherent risks to the right tube due to its attenuation along the enlarged right ovary; the potential development of adhesions and the possibility of infertility. After mistakenly removing the left fallopian tube, Respondent documented that he warned Patient 1 that adhesions may develop as a consequence of the right ovarian cyst removal. The possible development of adhesions as a consequence of the right ovarian cyst removal should have been discussed with the patient prior to surgery. It was a simple departure from the standard of care for Respondent to fail to obtain and document informed consent for the cesarean section and right ovarian cyst removal.

26. The standard of care requires that a physician performing a surgical procedure prepare a report of how the procedure was performed, including a contemporaneous account of the findings and subsequent treatment which allows the reader of the report to reconstruct the events that occurred during the procedure.

27. Respondent's report of operation for the procedures performed on Patient 1 was incomplete and contained inaccurate information. This is a simple departure from the standard of care.

28. Respondent's acts and/or omissions as set forth in paragraphs 9 through 27, above, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Violation of 22 CCR 70707.3)

29. Respondent's license is subject to disciplinary action under California Code of Regulations, title 22, section 70707.3, in that he failed to obtain informed consent for an elective reproductive sterilization procedure. Complainant refers to and, by this reference, incorporates the First Cause For Discipline, Paragraphs 17 through 21, above, as though set forth fully herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

30. Respondent's license is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate records concerning the care and treatment of Patient 1. Complainant refers to and, by this reference, incorporates Paragraphs 12, 14, and 24 through 27, above, as though set forth fully 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 A 33882, issued to Ebrahim Duel, M.D.;

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

3. Ordering Ebrahim Duel, 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: AUG 17 2020

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

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