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

In the Matter of the Accusation Against: James Nguyen, M.D. Physician's & Surgeon's Certificate No A 84676 Respondent.	Case No.: 800-2017-034232

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the Petition for Reconsideration, filed by Michael Firestone, MBA, J.D., and the time for action having expired at 5:00 p.m. on July 26, 2021, the Petition is deemed denied by operation of law.

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

In the Matter of the Accusation Against: **James Nguyen, M.D.** Physician's & Surgeon's Certificate No. A 84676 Respondent.	Case No. 800-2017-034232 **ORDER GRANTING STAY** (Government Code Section 11521)

Carolyne Evans, Deputy Attorney General, has filed a Request for Stay of execution of the Decision in this matter, currently stayed until July 16, 2021, at 5:00 p.m..

Execution is now stayed until July 26, 2021, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: July 15, 2021

William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Accusation Against: James Nguyen, M.D. Physician's & Surgeon's Certificate No. A 84676 Respondent	Case No. 800-2017-034232 **ORDER GRANTING STAY** (Government Code Section 11521)

Michael Firestone, MBA, J.D., on behalf of Respondent, James Nguyen, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of June 16, 2021, at 5:00 p.m..

Execution is stayed until July 16, 2021, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Respondent to file a Petition for Reconsideration.

DATED: May 24, 2021

William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Accusation Against: James Nguyen, M.D. Physician's and Surgeon's Certificate No. A 84676 Respondent	Case No. 800-2017-034232

DECISION

The attached Proposed Decision 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 June 16, 2021.

IT IS SO ORDERED May 17, 2021.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorpe, M.D., Chair
Panel B

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

In the Matter of the Accusation Against:

JAMES NGUYEN, M.D.,

Physician's and Surgeon's Certificate No. A 84676

Respondent.

Agency Case No. 800-2017-034232

OAH No. 2021010138

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on March 16 through 18, 2021, by videoconference.

Deputy Attorney General Carolyne Evans represented complainant William Prasifka, Executive Director of the Medical Board of California.

Marvin Firestone, M.D., Attorney at Law, appeared on behalf of respondent James Nguyen, who was present.

The record closed and the matter was submitted for decision on March 18, 2021.

FACTUAL FINDINGS

Background

1. On September 17, 2003, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 84676 to respondent James Nguyen, M.D. The certificate was in full force and effect at all times relevant to the charges in the accusation. It is scheduled to expire on April 30, 2021, unless renewed. This is the first disciplinary action against respondent's certificate.

Respondent is also an attorney and is licensed by the State Bar of California.

2. On January 23, 2020, Christine J. Lally issued this accusation solely in her official capacity as the Interim Executive Director of the Board. William Prasifka subsequently replaced Lally as the Board's Executive Director and the complainant in this matter. Respondent filed a timely notice of defense, and this hearing followed.

Patient #1

3. Respondent is a board-certified physical medicine and rehabilitation (PM&R) specialist. Between 2006 and 2017, respondent worked in the spine clinic at the Kaiser Permanente facility in San Jose (Kaiser San Jose). The spine clinic provides non-surgical treatment. It is adjacent to a spine surgery clinic and is part of a complex that includes an inpatient hospital.

4. Respondent met Patient #1 in 2007, when she sought treatment. Respondent's father became acquainted with Patient #1, and referred her to respondent. Patient #1 was an older woman, originally from Japan, who lived in a golfing community with her husband. Her husband's son and daughter-in-law lived nearby.

5. For 10 years, respondent treated Patient #1 for spine, shoulder, and foot conditions. His treatment included administering injections and prescribing pain medications. Patient #1 was treated by respondent in the spine clinic at least four times a year. Patient #1 also socialized with respondent on occasion. Respondent joined Patient #1 for golf when respondent's father was in town, along with Patient #1's husband and his son.

6. Respondent married in 2008. A daughter was born in 2009 and twin sons in 2013. Over time, Patient #1 met the family and developed a social relationship with respondent's wife and children. Patient #1 had no children of her own and became an "honorary godmother" to respondent's children. The children referred to Patient #1 as "grandma."

7. Patient #1 brought lunch for respondent when she had medical appointments, and also brought candy and other small gifts for the children. During social visits, Patient #1 gave gifts to respondent and his family, including cash gifts to the children on holidays. Patient #1 also wrote several large checks to respondent and/or his wife, including:

- A March 11, 2015, check for $1,000, made out to "Mr. or Mrs. Nguyen"
- A December 14, 2015, check for $300, made out to respondent's wife

- A February 18, 2016, check for $1,000, made out to respondent's wife
- A May 20, 2016, check for $500, made out to respondent's wife
- An October 5, 2016, check for $3,000, made out to "Mr. or Mrs. Nguyen"
- A December 19, 2016, check for $500, made out to "Mr. or Mrs. Nguyen"

8. Patient #1 was diagnosed with Parkinson's disease in 2016, at age 87. She was diagnosed with mild cognitive impairment at this time.

HOSPITALIZATIONS IN 2017

9. Patient #1 was hospitalized twice in February 2017. During these two hospital stays, she was under the care of hospital medical staff and not respondent, although respondent attended a palliative care consultation on February 13.

10. Patient #1 was first taken by ambulance to the Kaiser San Jose emergency room on February 9, 2017. She had been experiencing chills and loss of appetite and was confused upon arrival. Patient #1 was diagnosed with a urinary tract infection (UTI), which can cause confusion in older patients. Hospital records also reported delirium and altered mental status.

11. Both respondent and his wife visited Patient #1 during her first hospitalization. It was respondent's practice to visit his patients when they were in the hospital.

12. Patient #1 was discharged on February 11. Her condition worsened at home and she returned to the emergency department only a few hours later, on February 12. She was unable to walk and was oriented as to her name only. She was

admitted for recurrent UTI. At one point, she removed her IV and heart monitor. She did not recognize her husband when he visited.

13. On February 13, 2017, respondent's wife brought her three young children to the hospital to visit Patient #1. Patient #1's daughter-in-law was present and was surprised and uncomfortable during this visit.

RESPONDENT OBTAINS A FINANCIAL POA[1]

14. On the morning of February 14, 2017, respondent printed a two-page financial power of attorney (POA) form that he found on the internet in his office at Kaiser San Jose. Respondent filled in his name and his wife's name as the appointed agents, and Patient #1's name as the individual making the appointment. The form states that it does not authorize the agents to make medical or other health-care decisions.

The form requires the signatures of two witnesses. Respondent solicited the assistance of two members of the Kaiser San Jose medical staff, a medical assistant with whom he worked very closely and who knew Patient #1, and a registered nurse from the spine surgery clinic with whom he did not work closely and who was unfamiliar with Patient #1.

---

[1] As discussed below, respondent disputes some of the factual findings regarding the February 14, 2017 incident. Where the factual findings contradict respondent's testimony, they are based on the more credible testimony of the other percipient witnesses.

15. Respondent first approached the medical assistant and told her that Patient #1 was in the hospital. Respondent told her that he had some papers that needed to be signed and asked if she could be a witness. She had worked with respondent for 10 years and he had never made a request of this nature. She knew that Patient #1 was very fond of respondent and his family, and had said that he was "like a son" to her, and that Patient #1 always brought lunch and candy for respondent when she had an appointment in the clinic. The medical assistant felt uncomfortable with respondent's request and went to ask her manager. Her manager called the chief of the clinic, and he asked her to find out more information about the documents respondent wanted her to sign.

Meanwhile, respondent approached the registered nurse at her desk and asked if she could do him a favor. He explained that he needed her to be a witness for a POA for a long-time patient who was a family friend. The nurse asked what kind of POA, and respondent told her it was for health care decisions. She asked respondent if the patient was alert and oriented, and respondent said she was. She asked if the patient had family, and respondent said the patient had none.

16. Respondent and the nurse went to get the medical assistant. The medical assistant felt pressured to join them and did not ask for more information from respondent to report back to her manager. The three of them made the short walk to the hospital building. Along the way, there was some discussion about the POA document, and both the nurse and the medical assistant formed the impression that it was similar to a health care advanced directive.

17. At around 10:00 a.m., respondent and the two medical staff entered Patient #1's room. Her husband and his daughter-in-law were in the room visiting. Respondent asked Patient #1 if she wanted to "move forward" and took the POA form

out of his pocket. Patient #1 responded "yes." Her family members objected loudly and told her not to sign it.

Patient #1 was not wearing her glasses and could not read the POA form. The form contained the following list of 13 different powers that can be individually selected:

(A) Real property transactions.

(B) Tangible personal property transactions.

(C) Stock and bond transactions.

(D) Commodity and options transactions.

(E) Banking and other financial institution transactions.

(F) Business operating transactions.

(G) Insurance and annuity transactions.

(H) Estate, trust, and other beneficiary transactions.

(I) Claims and litigation.

(J) Personal and family maintenance.

(K) Benefits from social security, medicare, medicaid, or other governmental programs, or civil or military service.

(L) Retirement plan transactions.

(M) Tax matters.

At respondent's direction, Patient #1 initialed item (N), which stated "ALL OF THE POWERS LISTED ABOVE." Patient #1 signed the document appointing respondent and his wife as her agents for all financial matters listed, effective immediately.

The nurse noticed the word "stocks" on the front page of the POA document and became uncomfortable as she realized that the form was for financial matters and was not an advanced health care directive. Respondent quickly turned to the page for witness signatures. He directed the nurse and medical assistant to sign the document, and they did. Patient #1's daughter-in-law verbalized her objections throughout the time that respondent was in the room. She asked to see the document, and respondent refused to show it to her or tell her what it was. She stated that what respondent was doing was not legal, and respondent stated that he was a lawyer and that the document "would stand up in a court of law."

18. Respondent and the two medical staff walked back to their clinic. When asked, respondent told them that the individuals in the room were family members of Patient #1. The nurse asked why the POA mentioned stocks, and respondent told her that Patient #1 wanted him to help her protect her assets for her nephew who lived in Japan. The nurse felt uncomfortable that respondent had previously told her that the patient had no family and that the document was healthcare related. Both the nurse and the medical assistant would not have agreed to sign the document if they had understood that it was a financial POA. Both were uncomfortable and surprised by the incident, because respondent had a good reputation as trustworthy and honest.

19. When they arrived back at the spine clinic, the nurse went directly to her manager and reported the incident. Patient #1's daughter-in-law also reported the incident to Kaiser San Jose management, and learned that the document was a financial POA.

20. Respondent met with a team from Kaiser San Jose management later that day. As a result of this meeting, respondent agreed to rescind the power of attorney. He handwrote a brief note declining to accept the power of attorney and both he and his wife signed it, at around 5:00 p.m.

21. The following day, Kaiser issued a Letter of Warning to respondent, stating that his actions in obtaining the POA demonstrated poor judgment, exceeded the scope of his authority, and violated Kaiser's Conflict of Interest policy. Respondent was directed that he was no longer to provide medical care to Patient #1 and was ordered to take an ethics course. Respondent attended a 22-hour course on April 1 and 2, 2017, which was paid for by Kaiser.

22. Patient #1's family members were shocked and upset by his conduct. They contacted the police, the district attorney's office, an elder abuse unit, and the Medical Board, and retained legal counsel. The family obtained a temporary conservatorship over Patient #1 to prevent respondent and his wife from exercising the POA. Patient #1 later recovered from her illness and the conservatorship was dissolved. In the process, Patient #1's family discovered that she had written large checks to respondent. Patient #1 sued Kaiser San Jose and respondent and his wife.

23. Kaiser became aware of three of the large checks respondent had received from Patient #1, and determined that respondent had violated Kaiser policy by accepting them. Respondent was offered the opportunity to resign in lieu of termination, and did so.

24. On June 28, 2017, Kaiser submitted a report to the Board pursuant to Business and Professions Code section 805, stating that respondent resigned his

employment "following commencement of an investigation regarding a personal financial relationship with a patient."

AMA Code of Ethics

25. Section 1.1.1 of the AMA Code of Ethics defines Patient-Physician Relationships. It provides that:

> The practice of medicine, and its embodiment in the clinical encounter between a patient and a physician, is fundamentally a moral activity that arises from the imperative to care for patients and to alleviate suffering. The relationship between a patient and a physician is based on trust, which gives rise to physicians' ethical responsibility to place patients' welfare above the physician's own self-interest or obligations to others, to use sound medical judgment on patients' behalf, and to advocate for their patients' welfare.

26. Section 1.2.8 of the AMA Code of Ethics sets forth guiding principles relating to physicians accepting gifts from patients. It states:

> Patients offer gifts to a physician for many reasons. Some gifts are offered as an expression of gratitude or a reflection of the patient's cultural tradition. Accepting gifts offered for these reasons can enhance the patient-physician relationship.

Other gifts may signal psychological needs that require the physician's attention. Some patients may offer gifts or cash to secure or influence care or to secure preferential treatment. Such gifts can undermine physicians' obligation to provide services fairly to all patients; accepting them is likely to damage the patient-physician relationship.

The interaction of these factors is complex and physicians should consider them sensitively before accepting or declining a gift.

Physicians to whom a patient offers a gift should:

(a) Be sensitive to the gift's value relative to the patient's or physician's means. Physicians should decline gifts that are disproportionately or inappropriately large, or when the physician would be uncomfortable to have colleagues know the gift had been accepted.

(b) Not allow the gift or offer of a gift to influence the patient's medical care.

(c) Decline a bequest from a patient if the physician has reason to believe accepting the gift would be an emotional or financial hardship to the patient's family.

(d) Physicians may wish to suggest that the patient or family make a charitable contribution in lieu of the bequest, in keeping with ethics guidance.

Complainant's Expert

27. Complainant retained Dinesh Sharma, M.D., as an expert witness. Dr. Sharma is a board-certified PM&R specialist practicing in Visalia. Dr. Sharma has served as an expert for the Board since the 1990s and has reviewed dozens of cases. He does not have specialized training in medical ethics; he based his opinions on the AMA Code of Ethics and his experience, training, and knowledge. Dr. Sharma reviewed documents provided by the Board's investigator, wrote a report with his opinions, and testified at hearing.

28. Dr. Sharma concluded that respondent violated the standard of care by accepting large cash gifts from Patient #1, and that accepting these checks constituted unethical and unprofessional conduct. In his 38 years of practice, he has not heard of any physicians accepting large amounts of cash from patients, and he believes physicians should decline to accept cash gifts from patients. In his practice, he has been offered and accepted only small gifts, such as food items at the holidays. Dr. Sharma explained that accepting a large cash gift would harm the patient-physician relationship, which is based on trust and putting the needs of the patient first.

29. Dr. Sharma concluded that respondent also violated the standard of care and engaged in unethical conduct by obtaining a financial POA from Patient #1. He explained that it was unethical for respondent to lie to the medical staff when asking them to sign as witnesses, and that it was unethical to get a financial POA from a patient, especially an elderly, cognitively impaired patient without glasses to read the document. In his opinion, no reasonable physician would accept or solicit a financial POA from a patient, even if the patient was not impaired. Dr. Sharma described respondent's conduct as alleged in the accusation as "egregious" and clearly a deviation from the standard of care.

Respondent's Evidence

RESPONDENT'S EDUCATIONAL AND WORK HISTORY

30. Respondent was born in Vietnam, where his father was a physician. The family immigrated to the United States in 1975, when respondent was eight years old. Respondent's father completed a residency in obstetrics and gynecology in Buffalo, New York, in order to be able to practice medicine in the United States. The family then settled in Long Island.

31. Respondent earned a bachelor's degree in philosophy at SUNY Stony Brook in 1990, and a juris doctorate degree from the University of Pennsylvania in 1994. After completing a clerkship in Hawaii and passing the California Bar exam, he decided to go to medical school. Respondent received his Doctor of Medicine from McGill University in 2002. He was accepted into a general surgery residency at UCLA, and switched into a PM&R residency after one year. Upon completion of residency, he went to work at Kaiser San Jose. He became board-certified a year or two later, and he was re-certified in 2018.

32. After leaving Kaiser San Jose in 2017 due to the incidents discussed above, respondent was hired by Dignity Health and worked at two hospitals in San Francisco (St. Mary's and St. Francis). He left this position in the fall of 2019 to work for the VA in Palo Alto, where he is currently employed.

TESTIMONY OF RESPONDENT'S WIFE

33. Respondent's wife testified about her relationship with Patient #1. She met Patient #1 in 2013 and quickly formed a close relationship. She stated that she took Patient #1 on numerous outings and errands and always paid for her. She and

Patient #1 were both Asian, and respondent's wife explained that she was adhering to cultural principles of honoring the elderly. Respondent's wife testified that some of the large checks Patient #1 wrote were gifts to the children and others were to reimburse her for picking up the bill when they went on outings.

Respondent's wife explained that the check for $3,000 was to reimburse her for a rare bonsai tree and vase and for other expenses incurred for the creation of a bonsai garden at respondent's home that was meant as a tribute to Patient #1 and her Japanese heritage. Respondent's wife testified that she gave many gifts to Patient #1 during the course of their friendship. Respondent's wife has a large jewelry collection because her parents own a jewelry store in Vietnam, and whenever Patient #1 admired a piece of her jewelry, she would give it to her or obtain a similar item for her. Respondent's wife believes that the value of the gifts she gave to Patient #1 over the years was comparable to the value of the gifts and checks Patient #1 gave to her and her family.

Respondent's wife testified that when she visited Patient #1 in the hospital in February 2017, Patient #1 asked for her help with financial matters. She told her that she wanted her estate to go to her nieces and nephews in Japan. Patient #1 requested that respondent and his wife accept a POA on her behalf, stating that her own husband was too old, and she did not trust her daughter-in-law. Respondent's wife explained that Patient #1 wanted them to accept the POA because she was concerned about paying a credit card bill and because she wanted help moving into a nursing home. Respondent's wife told respondent about these conversations. Respondent told her that he did not want to get involved, but that she should accept the POA for Patient #1 and help her find a suitable nursing home.

Respondent's wife believes that she and respondent acted to help Patient #1 and that they have been unfairly hurt in return. Their reputation has been damaged, and they have had to explain their actions to friends and family who have read negative things about them online.

RESPONDENT'S TESTIMONY REGARDING THE ALLEGATIONS

34. Respondent admitted many of the allegations in the accusation. He denied some of the allegations, and he strenuously defended his actions as neither unprofessional nor unethical. Respondent requested that the accusation be dismissed.

Respondent explained that Patient #1 asked both him and his wife about a POA when they separately visited her during her hospitalizations. He initially declined. Respondent further explained that he changed his mind and decided to have Patient #1 sign the POA form because he wanted to stop her daughter-in-law from "pestering" and "badgering" her. He testified – in contradiction to the daughter-in-law – that he had encountered her inside Patient #1's room earlier on the morning of February 14; that she had been pestering Patient #1 to sign a document; that she later privately asked for his help to convince Patient #1 to sign a POA appointing her as agent; and that he then told her that Patient #1 wanted him to be her POA and that he had now decided to accept this responsibility. Even if respondent's testimony regarding these interactions were true, it would not change the ultimate findings, legal conclusions, or disciplinary outcome in this matter.

Respondent denied being untruthful with the medical staff when he asked them to be witnesses and, in contradiction to their testimony, asserted that he did advise them that the document was financial in nature. Respondent accused the medical staff of falsely stating that he misrepresented the nature of the document because they

wanted to "distance" themselves from respondent when all were sued by Patient #1. This testimony was not credible.

Respondent asserted – in contradiction to the other witnesses – that he performed an abbreviated mental health status examination on Patient #1 prior to obtaining her signature on the POA, by asking Patient #1 to state the date and place, and to identify the individuals in the room. He concluded that she was alert and oriented and competent to sign a legal document. Respondent testified that he explained what the document was to Patient #1 and her husband and daughter-in-law, and that he read parts of it out loud. He denied stating that he is an attorney and that the document would "stand up in court." Even if respondent's testimony about his conduct in Patient #1's room were true, it would not change the ultimate findings, legal conclusions, or disciplinary determination in this matter.

Respondent explained that there was an "emotional component" to his actions, but never acknowledged any motivation other than to protect and benefit Patient #1. He asserted several times that he was acting by his conscience and in Patient #1's best interests. Respondent stated that he never intended to use the powers granted by the POA, although he also stated that if called on to do so, he was committed to acting in Patient #1's interests. Respondent admitted that he could have taken other actions that would have been "more reasonable and rational" and that had he done so he would not find himself subject to disciplinary proceedings. For example, he had initially considered helping Patient #1 locate an attorney to help her with her financial concerns.

35. Respondent stated that he was unaware of the checks that were sent to him and his wife by Patient #1. He stated that his wife had once told him that Patient #1 had sent a check for $300, and that he directed her to return it, and that he had

never been told about the other checks. Respondent stated that he had been informed that Patient #1 had purchased beds for his twin sons. He later became aware that she had sent a check for $1,000 for this purpose and did not directly purchase the beds.

Respondent denied that the close relationship between his family and Patient #1 influenced his treatment of her as her physician, insisting that he is a professional and treats all his patients the same.

36. Respondent denied that he was terminated by Kaiser. He stated that he accepted a severance offer and voluntarily resigned, although he admitted that Kaiser was prepared to initiate termination proceedings. Respondent stated that he was asked to resign because he violated Kaiser's policy on receiving gifts from patients, and not because of the POA incident. He stated that Kaiser management did not think he did anything wrong in relation to the POA, but asked him to rescind it because it created the "appearance of a conflict." Respondent added that he had been unaware of Kaiser's gift policy. He told Kaiser that he had not known that Patient #1 had sent the checks to his wife, but that Kaiser concluded he violated the gift policy because the checks were deposited in a joint bank account. Respondent stated that he had a "falling out" with Kaiser after Kaiser refused to defend him when he was sued by Patient #1, and felt that it was in his interest to resign because their interests were no longer aligned.

37. Respondent testified that no action has been taken against him by the State Bar of California, and that the State Bar's lawyer who investigated the matter told him that he did nothing wrong.

38. Respondent discussed his views on accepting gifts from patients, and submitted several journal articles on the topic. He noted that physicians have accepted

gifts from patients throughout history; that accepting gifts is not forbidden by the Hippocratic oath; and that there is no code directing that a physician cannot accept a financial POA for a patient. Respondent acknowledged that gifts can complicate the physician-patient relationship, but added that in some situations gifts can actually benefit the relationship by reinforcing patient trust, self-autonomy, and self-worth. He added that not accepting a gift is offensive in some cultures. Respondent does not believe there is one right answer on the question of accepting gifts from patients.

39. Respondent took a second medical ethics course in 2021, just days before the hearing. He took this second course because he wanted to demonstrate to the Board that he cares about medical ethics and is committed to doing what is best for his patients and for the medical profession.

40. Respondent was not a credible witness. His testimony was self-serving and defensive. As noted above, where respondent's testimony contradicted other witnesses, it was found to be less credible.

OTHER EVIDENCE

41. Four physicians testified on behalf of respondent:

a. Lawrence Won, M.D., testified and wrote a letter. Dr. Won is the chief of the PM&R Department at Kaiser in San Jose, and was respondent's colleague during respondent's tenure there. Dr. Won and respondent consulted with each other about many patients. Dr. Won observed respondent with patients and found respondent to be empathetic, an effective communicator, and a good educator. Dr. Won trusted and relied on respondent. He noted that respondent always volunteered to work late and on weekends to serve his patients. For a time, respondent was the quality lead for the department, a position of trust. Dr. Won stated that respondent had a reputation for

honesty and integrity. After respondent left Kaiser, many of respondent's patients cried. Dr. Won realized how well respondent treated his patients when he saw how high their expectations were. Dr. Won was uncomfortable discussing the allegations in the accusation, and only wanted to discuss his favorable opinions of respondent. He did acknowledge that he has never accepted gifts from patients or been asked by a patient to act as a financial POA.

b. Wayne Smith, M.D., testified and wrote a letter. Dr. Smith worked with respondent at the spine clinic at Kaiser in San Jose. Dr. Smith was chief of the department for several of those years and supervised respondent. Dr. Smith described respondent as dedicated, caring, knowledgeable, and always willing to go the extra mile for his patients. Dr. Smith respected respondent as a person and professional, and referred family members to him for care. Dr. Smith does not know the details of the accusation, but stated that the allegations are not consistent with the person he knows. Dr. Smith refused to answer any questions about the allegations and would not express any opinions about the propriety of the alleged conduct. This reticence diminished the weight of his testimony.

c. Jeffrey K. Teraoka, M.D., testified and wrote two letters. Dr. Teraoka is the Chief of the PM&R Department at the VA in Palo Alto, where respondent now works. Dr. Teraoka hired respondent in October 2019. Dr. Teraoka has a high opinion of respondent's clinical skills and interactions with patients. He finds respondent to be trustworthy, honest, fair, objective, and reliable. Respondent took a leadership role during the pandemic developing new protocols within the unit and coordinating with other departments. He stated that respondent has been nothing less than professional while working at the VA and has volunteered with the COVID-19 vaccination of veterans.

Dr. Teraoka acknowledged that the allegations against respondent raise concerns, and that he has never sought a POA from a patient and has never accepted cash gifts from patients. The allegations in the accusation are not consistent with his experiences with respondent.

d. Ninad Karandikar, M.D., is a PM&R specialist at the VA in Palo Alto. He also works for Dignity Health on the weekends. Dr. Karandikar met respondent in 2018 during his weekend shifts at Dignity Health, and they are now colleagues at the VA. Dr. Karandikar described respondent as honest and professional in every regard and in every setting. He commended respondent's interactions with patients, staff, and medical residents. Dr. Karandikar was not comfortable discussing the allegations in the accusation, but acknowledged that obtaining a financial POA and misrepresenting the contents of the documents to medical staff would raise concerns for him.

42. Respondent submitted the following letters:

a. Thao N. Pham, D.O., works in the occupational health department at Kaiser in San Jose, and collaborated with respondent on a number of shared patients. Dr. Pham wrote that while working at Kaiser, respondent had a reputation as a caring and respected physician who advocated for his patients, and as a colleague who worked well with doctors and staff. Dr. Pham described respondent as professional, honest, and truthful. Dr. Pham believes that the allegations in the accusation are "out of character" for respondent, and urges the Board to look at the "totality of the person."

b. Marc Wakasa, M.D., is the Medical Director of St. Mary's Medical Center. He worked with respondent in 2018-2019 and found him to be an excellent and

professional physician. Dr. Wakasa wrote that he had a general knowledge of the allegations in the accusation, but that he continues to have confidence in him.

c. Wan C. Chi, M.D., is the Medical Director of Acute Rehabilitation at St. Francis Memorial Hospital, and he became acquainted with respondent when respondent was working at the hospital. Dr. Chi wrote that respondent is an excellent physician, that he was well-liked by patients, colleagues, and staff, and that he exhibited a high level of professionalism. Dr. Chi is aware of the allegations in the accusation.

d. Carole Warner was respondent's patient for two years, when he was employed by Dignity Health. She wrote that she is aware of the allegations in the accusation. Warner wrote that respondent was attentive, engaged, communicated with her frequently, and that he embodies what she believes a physician should be when handling a complex case such as hers. She doubts that she will ever find a doctor as caring and professional as respondent.

Ultimate Findings re: Causes for Discipline

43. Clear and convincing evidence established that respondent accepted gifts and checks totaling more than $4,500 from Patient #1; that he made false statements to two individuals on the medical staff of Kaiser to induce them to sign a POA as witnesses; that he obtained the signature of Patient #1, who was hospitalized with an altered mental status and who did not have her glasses and could not read the POA granting him and his wife power over all her finances, and that he did so over the objections of her family members; and that he continues to assert that he did nothing wrong. This conduct was unethical and unprofessional. Respondent's misstatements to

the two individuals on Kaiser's medical staff also constituted acts of dishonesty which were substantially related to the qualifications, functions, or duties of a physician.

LEGAL CONCLUSIONS

1. The Board may take disciplinary action for unprofessional conduct (Bus. & Prof. Code, § 2234) and for dishonest or corrupt acts that are substantially related to the qualifications, functions, or duties of a licensee (*id.*, subd. (e)). Cause exists to discipline respondent's certificate pursuant to these statutes, in light of the matters set forth in Finding 43.

2. In exercising its disciplinary functions, protection of the public is the Board's highest priority. (Bus. & Prof. Code, § 2229, subd. (a).) The Board is also required to take disciplinary action that is calculated to aid the rehabilitation of the physician whenever possible, as long as the Board's action is not inconsistent with public safety. (Bus. & Prof. Code, § 2229, subds. (b), (c).)

3. The Board's Manual of Disciplinary Orders and Disciplinary Guidelines (12th ed., 2016; Cal. Code Regs., tit. 16, § 1361) provide for a minimum discipline of five years' probation and a maximum penalty of revocation as the recommended penalties for unprofessional conduct, and for a minimum discipline of a one-year suspension plus at least seven years' probation, and a maximum penalty of revocation as the recommended penalties for dishonest acts.

4. The misconduct in this matter is egregious. Respondent abused his position as a physician and engaged in deception in order to enlist medical staff to witness the signing of the POA. He obtained the signature from an elderly patient with documented cognitive impairment over the objection of family members who were

present. It was later discovered that he and his wife accepted large cash gifts from the patient during the prior two years. Respondent's conduct caused extreme harm to his patient and her family. His testimony at hearing lacked credibility in significant respects.

Despite completing two multi-day ethics courses, respondent continues to defend his actions and to insist that he was following his conscience and acting in his patient's best interests. He demonstrated a startling disregard of the ethical principles governing the practice of medicine. There was no evidence that respondent sought counseling to develop insight into his actions in order to prevent future ethical lapses.

A physician's ethical obligations are as important as his or her clinical skills and judgment. Respondent's ethical violations were outrageous and demonstrate unfitness to practice medicine in a manner consistent with public safety. Respondent's failure to accept responsibility for his grave misconduct makes him an unsuitable candidate for probation.

In light of the severity of the misconduct and respondent's failure to demonstrate remorse or insight, license revocation is the appropriate discipline. It would be against the public interest to permit respondent to retain his physician's and surgeon's certificate.

ORDER

Physician's and Surgeon's Certificate No. A 84676, issued to respondent James Nguyen, M.D., is revoked.

DATE: 04/16/2021

Karen Reichmann
KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
State Bar No. 116564
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3521
Facsimile: (415) 703-5480
E-mail: Janezack.simon@doj.ca.gov
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO JAN. 23 2020
BY A. GERONIMO ANALYST

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

In the Matter of the Accusation Against:	Case No. 800-2017-034232
James Nguyen, M.D. 2231 Fortune Dr. Ste. D San Jose CA 95131-1871 Physician's and Surgeon's Certificate No. A 84676, Respondent.	**ACCUSATION**

PARTIES

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

2. On September 17, 2003, the Medical Board issued Physician's and Surgeon's Certificate Number A 84676 to James Nguyen, 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.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, provides, in pertinent part, that the Board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> . . .
>
> (e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

6. Unprofessional conduct is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical professional, and which demonstrates an unfitness to practice medicine.[1]

7. The American Medical Association (AMA) Principles of Medical Ethics define basic principles of ethical conduct by physicians, and constitute standards of conduct that define the essentials of honorable behavior for physicians. The AMA Principles of Medical Ethics require a physician to uphold the standards of professionalism, be honest in all professional interactions, and regard responsibility to the patient as paramount.

CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Ethical Violations/Dishonest or Corrupt Acts)

8. Respondent specializes in physical and rehabilitative medicine, and at the time of the events in question, worked at Kaiser Permanente. In 2007, Respondent began to treat Patient 1[2], an elderly woman, for complaints of back, shoulder and foot pain. Between 2007 and 2017, Respondent treated Patient 1 with various trigger point injections and medications including

---

[1] *Shea v. Board of Medical Quality Assurance* (1978) 81 Cal.App.3d 564, 575.
[2] The patient is referred to as Patient 1 to protect confidentiality.

narcotic pain medication and benzodiazepines. Respondent also referred Patient 1 to other care providers as necessary to address her ongoing physical issues. In 2015, at age 86, Patient 1 was diagnosed with Parkinson's Disease.

9. Over the course of treatment, Respondent, as well as his wife and children, developed a friendly relationship with Patient 1. Patient 1 gave Respondent and his wife a number of gifts, including cash gifts of at least $4,500.

10. On February 9, 2017, 87 year old Patient 1 was transported by ambulance to the Kaiser emergency room and admitted for altered mental status, weakness, delirium, chills and loss of appetite. Her admitting history noted mild cognitive impairment. Patient 1 was accompanied by her elderly husband and her daughter-in-law. Patient 1 was treated for a urinary tract infection and discharged after two days.

11. On February 12, 2017, Patient 1 again presented to the emergency room after falling at home. Her condition had worsened, and she presented with weakness, decreased appetite, mild cognitive impairment and inability to ambulate. The family reported that Patient 1 had declined rapidly over the past several months. Patient 1 was admitted for recurrent urinary tract infection, and remained in the hospital until February 18, 2017.

12. Patient 1 was treated by physicians other than Respondent during her February 2017 hospitalizations. Respondent's wife visited Patient 1 during her second hospitalization, and brought her children to visit as well. On February 14, 2017, Patient 1's husband and daughter-in-law arrived at the hospital shortly before 7 a.m. A few minutes later, Respondent's wife entered the room, and shortly thereafter Respondent walked into the room, accompanied by two members of the Kaiser nursing staff. Respondent handed Patient 1 a document and asked her to sign it. Patient's daughter-in-law and husband inquired about the nature of the document, but Respondent refused to say what it was. He stated that he had discussed the matter with Patient 1, he was an attorney, the document was legal and would "stand up in a court of law." Respondent proceeded to obtain Patient 1's signature on the document, over the vocal objection of Patient 1's husband and daughter-in-law.

13. The document presented to Patient 1 for signature was a Statutory Form Power of Attorney, granting Respondent and his wife full power and authority over Patient 1's financial affairs.

14. Respondent was untruthful with the nursing staff he asked to witness the signing of the Power of Attorney. Respondent told both staff members that the document to be signed was an advance directive for health care, and the other staff member was also under the impression that the document was an advance directive. Respondent told one of the staff members that Patient 1 had no family, and told the other staff member he had been asked by the patient to help her keep her assets away from her daughter-in-law and husband. Both agreed to witness the document because they believed it to be an advance directive. One of the nurses realized the document was a Power of Attorney and promptly reported the incident to her charge nurse. The charge nurse asked Respondent to leave Patient 1's room. Respondent stated he did nothing wrong and did not know what the problem was.

15. Patient 1's family lodged a complaint with Kaiser. Respondent was called before Kaiser management and required to rescind the Power of Attorney, although he continued to maintain he did nothing wrong. During his July 15, 2019 interview with the Board investigator, Respondent, who had by that time completed an ethics course, conceded his conduct was a "lapse in judgment", but repeatedly rationalized his behavior by stating that he was not providing medical treatment to Patient 1 during her hospitalization, Patient 1 knew he was a lawyer, he was acting as a family friend and was "emotionally overcome."

16. Respondent James Nguyen, M.D. engaged in unprofessional and unethical conduct when he accepted significant cash gifts from his elderly patient and obtained a financial Power of Attorney, particularly given the objections of Patient 1's family. Respondent acted with dishonesty when he misrepresented the nature of his intended action to the staff members he asked to witness the execution of the Power of Attorney. Respondent is therefore subject to disciplinary action for unprofessional conduct under section 2234 and/or 2234(e) of the Code.

///

///

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 84676, issued to James Nguyen, M.D.;

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

3. Ordering James Nguyen, 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: JAN. 23, 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SF2019202700
21730517.docx