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

In the Matter of the First Amended Accusation Against: Alan William Hemming, M.D. Physician's and Surgeon's Certificate No. C 53758 Respondent.	Case No. 800-2017-037445

DECISION

The attached Stipulated Surrender of License 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 NOV 12 2021.

IT IS SO ORDERED NOV 05 2021.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
CHRISTINE A. RHEE
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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 First Amended Accusation Against: **ALAN WILLIAM HEMMING, M.D.** **200 Hawkins Drive #400GH** **Iowa City, IA 52242-1009** **Physician's and Surgeon's Certificate No. C 53758,** Respondent.	Case No. 800-2017-037445 OAH No. 2021020438 **STIPULATED SURRENDER OF LICENSE AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Christine A. Rhee, Deputy Attorney General.

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2. Alan William Hemming, M.D. (Respondent) is represented in this proceeding by attorney David Rosenberg, Esq., whose address is: 10815 Rancho Bernardo Road, Suite 310 San Diego, CA 92127.

3. On or about July 29, 2009, the Board issued Physician's and Surgeon's Certificate No. C 53758 to Alan William Hemming, 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 First Amended Accusation No. 800-2017-037445 and will expire on March 31, 2023, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2017-037445 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on October 7, 2021. Respondent timely filed his Notice of Defense contesting the First Amended Accusation. A true and correct copy of First Amended Accusation No. 800-2017-037445 is attached as Exhibit A and incorporated by reference herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2017-037445. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Disciplinary 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 First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Having had the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations contained in First Amended Accusation No. 800-2017-037445, and that he has thereby subjected his license to disciplinary action.

9. Respondent agrees that if he ever petitions for reinstatement of his license, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations in First Amended Accusation No. 800-2017-037445 shall be deemed true, correct, and fully admitted by Respondent for purposes of any proceeding or any other licensing proceeding involving Respondent in the State of California.

10. Respondent is currently employed by the University of Iowa, where he has served as a Professor of Surgery for Transplantation & Hepatobiliary Surgery and Surgical Director of the Liver Transplant Program since 2019. Complainant acknowledges that Respondent's relocation to Iowa renders implementation of the Board's probationary terms unfeasible.

11. Whereas probation cannot be successfully completed out of state for Respondent, and whereas Respondent has no intention of returning to practice in California, Respondent desires to voluntarily surrender his Physician's and Surgeon's Certificate No. C 53758 in order to avoid the unnecessary time and expense of a hearing.

12. Complainant acknowledges that the results of a December 5, 2017, comprehensive neuropsychological examination conducted by the Vanderbilt Comprehensive Assessment Program found him "fit to practice," subject to the discontinuation of self-directed Ambien use. Complainant also acknowledges that approval of Respondent's clinical privileges at the University of Iowa was contingent upon his undergoing random drug testing, counseling, monitoring, and proctoring, all of which were successfully completed as of April 15, 2020.

13. 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.

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CONTINGENCY

14. Pursuant to Business and Professions Code section 2224, subdivision (b), the Executive Director of the Board has been delegated the authority to adopt or reject a stipulation for surrender of a Physician's and Surgeon's Certificate.

15. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved by the Executive Director on behalf of the Board. 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 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.

16. The Executive Director shall have a reasonable period of time in which to consider and act upon this stipulation 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 considers and acts upon it.

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ADDITIONAL PROVISIONS

17. This Stipulated Surrender 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-listed matter.

18. The parties agree that copies of this Stipulated Surrender 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.

19. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 53758, issued to Respondent Alan William Hemming, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in First Amended Accusation No. 800-2017-037445 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 First Amended Accusation, No. 800-2017-037445 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 Disciplinary Order and have fully discussed it with my attorney David Rosenberg, Esq. 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 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: October 22nd, 2021

ALAN WILLIAM HEMMING, M.D.
Respondent

I have read and fully discussed with Respondent Alan William Hemming, M.D., the terms and conditions and other matters contained in this Stipulated Surrender of License and Disciplinary Order. I approve its form and content.

DATED: 10/22/21

DAVID ROSENBERG, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

DATED: October 22, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

CHRISTINE A. RHEE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2017-037445

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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 First Amended Accusation Against: **ALAN WILLIAM HEMMING, M.D.** **200 Hawkins Drive #400GH** **Iowa City, IA 52242-1009** **Physician's and Surgeon's Certificate No. C 53758,** Respondent.	Case No. 800-2017-037445 **FIRST AMENDED ACCUSATION**

PARTIES

1. William Prasifka (Complainant) brings this First Amended Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 29, 2009, the Board issued Physician's and Surgeon's Certificate No. C 53758 to Alan William Hemming, 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 March 31, 2023, unless renewed.

JURISDICTION

3. This First Amended Accusation, which supersedes the Accusation filed on October 5, 2020, is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states, in pertinent part:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
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> (1) Have his or her license revoked upon order of the board.
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> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
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> ...

5. Section 2228.1 of the Code states, in pertinent part:

> On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:
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> (1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:
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> ...
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> (B) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.

...

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

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

...

(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.

...

7. Section 2239 of the Code states, in pertinent part:

(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct.

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8. Section 2266 of the Code states that 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.

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FACTUAL ALLEGATIONS

9. From 2009 to 2017, Respondent was the Chief of Transplantation & Hepatobiliary Surgery and Director for the Center for Hepatobiliary Disease & Transplantation at the University of California, San Diego (UCSD).

10. From approximately March 2015 through August 2017, Respondent filled approximately 23 prescriptions for 30 tablets of 10 mg Ambien.[1]

11. In 2016, Respondent wrote two prescriptions for Ambien for K.M., M.D., a work colleague. Respondent never physically examined K.M. or documented his treatment of K.M. or prescriptions given.

12. On or about September 20, 2017, UCSD received a notification that two livers were available for Patient A[2] for possible transplantation. Patient A was a 58-year-old morbidly obese woman with end-stage liver disease secondary to nonalcoholic steatohepatitis.[3] Patient A's MELD score[4] was 40.

13. On or about September 20, 2017, another colleague, J.B., M.D., spoke to Respondent about the offers for Patient A. J.B. noticed that Respondent was having a hard time following what she was saying. Despite J.B.'s explanation, Respondent could not differentiate between the two offers and became angry. Later that day, J.B. turned down one of the livers after learning that it was 40-50% fatty.

14. On or about the same day, Respondent received at least two separate emails notifying him and the other members of the transplant team of the date and time of Patient A's liver transplantation surgery, which was scheduled to take place the next day on September 21, 2017, at 6:00 a.m.

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[1] Ambien, brand name for zolpidem tartrate, is a sedative hypnotic and a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d).

[2] Patient A's name is withheld to protect her privacy. Respondent is aware of Patient A's identity.

[3] Also known as nonalcoholic fatty liver disease.

[4] The Model for End State Liver Disease (MELD) score is a number ranging from 6 to 40 ranking a patient's severity of sickness and urgency in obtaining a liver transplant.

15. On or about September 20, 2017, J.B. emailed Respondent. Respondent replied on or about September 21, 2017 at 3:00 a.m. J.B. responded by telling Respondent that the procedure would begin at 6:00 a.m., and that Respondent should be there no later than 8:00 a.m.

16. On or about September 21, 2017 at approximately 8:00 a.m., despite being called and texted, Respondent did not appear for Patient A's surgery. Respondent did not respond to his colleagues' calls and texts. J.B. decided to move forward with the procedure with G.S., M.D., assisting.

17. At approximately 9:00 a.m., K.M., M.D., called and spoke to Respondent on the phone. Respondent yelled at K.M. to bar J.B. from starting the procedure, as it was scheduled to start at 10:00 a.m.

18. At approximately 9:45 a.m., Respondent appeared in the operating room. At that point, J.B. and G.S. had completed approximately 90% of the hepatectomy.[5] Respondent did not have a surgical hat on and was told to go get one. Respondent scrubbed in and took over from J.B. as lead surgeon. G.S. left the operating room.

19. During the procedure, Respondent complained about the retractor and incision. J.B. observed Respondent cut through Patient A's pancreas looking for an artery. Respondent repeatedly asked J.B. about the alternate liver J.B. had rejected, and was repeatedly told that it was too fatty.

20. At some point during the procedure, Respondent stopped for a second and started swaying. When asked if he was okay, Respondent said he was tired and that interns kept calling him all night with questions. Respondent, however, was not on call the night before; J.B. was.

21. When Respondent continued with the procedure, he cut the right hepatic vein which started to bleed profusely. J.B. tried to help with the bleeding but Respondent would not let her. The anesthesiologist had to give the patient multiple units of blood. Respondent tried to stitch the vein, but was unsuccessful in stopping the bleeding. At this point, Patient A was very unstable. Respondent and J.B. tried to place the transplant liver in Patient A's body, but had difficulty visualizing due to the bleeding pancreas.

[5] Surgical removal of the old liver.

22. While Respondent tried putting stitches in, they became tangled. Respondent sewed veins closed and sewed things to the back wall. J.B. repeatedly told Respondent that he was placing stitches in the wrong place. Respondent did not appear to understand.

23. Respondent unclamped the vena cava which caused more bleeding. Patient A coded for approximately 20 minutes until her pressures came back. At another point during the procedure, J.B.'s glove got caught under a clamp. Instead of cutting the glove or putting other clamps on, Respondent released the clamp, causing the patient to bleed out from the heart. Patient A coded and died.

24. As they were cleaning up, Respondent asked J.B. if she wanted him to talk to Patient A's family. Respondent blamed J.B.'s placement of the retractor as the reason why the surgery went so badly.

25. As she was waiting for the social worker, J.B. observed Respondent wandering around and asking where the operating room was. J.B. spoke to Patient A's family without Respondent.

26. Due to Respondent's aberrant behavior during Patient A's surgery, UCSD summarily suspended Respondent's privileges and conducted an internal investigation. On or about October 3, 2017, Respondent told UCSD investigators that he believed his behavior during Patient A's procedure was a reaction to taking Ambien the night before. Respondent stated that he had taken one dose of Ambien on the evening of September 20, 2017, with a possible second dose sometime thereafter.

FIRST CAUSE FOR DISCIPLINE

(Use or Administration of a Controlled Substance to Himself in Such a Manner as to be Dangerous or Injurious to the Extent that Such Use Impairs the Ability of the Licensee to Practice Medicine Safely)

27. Respondent has subjected his Physician's and Surgeon's Certificate No. C 53758 to disciplinary action under section 2227 and 2234, as defined by section 2239, of the Code, in that he used or administered Ambien to himself in such a manner as to be dangerous or injurious to the extent that such use impaired his ability to practice medicine safely, as more particularly

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alleged in paragraphs 9 through 26, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE
(Gross Negligence)

28. Respondent has further subjected his Physician's and Surgeon's Certificate No. C 53758 to disciplinary action under section 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in the care and treatment of Patient A, as more particularly alleged hereinafter:

29. Paragraphs 9 through 27, above, are hereby incorporated by reference and re-alleged as if fully set forth herein.

30. Respondent committed gross negligence which includes, but is not limited to, the following:

a. Respondent performed a liver transplantation procedure on Patient A while in an altered state; and

b. Respondent failed to communicate with Patient A's family immediately after the surgical procedure.

THIRD CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

31. Respondent has further subjected his Physician's and Surgeon's Certificate No. C 53758 to disciplinary action under section 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed gross negligence in the care and treatment of Patient A, as more particularly alleged hereinafter:

32. Paragraphs 9 through 30, above, are hereby incorporated by reference and re-alleged as if fully set forth herein.

33. Respondent committed repeated negligent acts, which include, but are not limited to, the following:

a. Respondent failed to effectively communicate with his transplant team regarding Patient A's liver transplant surgery; and

b. Respondent committed negligence by writing Ambien prescriptions for his colleague K.M. without documenting an exam or creating any other related medical records.

FOURTH CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records)

34. Respondent has further subjected his Physician's and Surgeon's Certificate No. C53758 to disciplinary action under section 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records with regards to his treatment of his colleague, K.M., as more particularly alleged in paragraphs 11 and 33, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. C53758, issued to Respondent Alan William Hemming, M.D.;

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

3. Ordering Respondent Alan William Hemming, M.D., if placed on probation, to pay the Board the costs of probation monitoring;

4. Ordering Respondent Alan William Hemming, M.D., if placed on probation, to disclose the disciplinary order to patients pursuant to section 2228.1 of the Code; and

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

DATED: OCT 0 6 2021

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