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

In the Matter of the First Amended Accusation Against: **Michel Francois Levesque, M.D.** **Physician's and Surgeon's Certificate No. G 59708** **Respondent.**	**Case No. 800-2018-046939**

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 11, 2022.

IT IS SO ORDERED February 4, 2022.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

ROB BONTA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General
LYNETTE D. HECKER
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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: **MICHEL FRANCOIS LEVESQUE, M.D.** **269 South Beverly Drive, Number 320** **Beverly Hills, CA 90212** **Physician's and Surgeon's Certificate No. G 59708** Respondent.	Case No. 800-2018-046939 **STIPULATED SURRENDER OF LICENSE AND ORDER**

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

PARTIES

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

2. MICHEL FRANCOIS LEVESQUE, M.D. (Respondent) is represented in this proceeding by attorney Peter R. Osinoff, Esq., whose address is: 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071-1562.

3. On or about March 9, 1987, the Board issued Physician's and Surgeon's Certificate No. G 59708 to MICHEL FRANCOIS LEVESQUE, 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. 800-2018-046939 and will expire on October 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-046939 was filed before the Board. The Accusation and all other statutorily required documents were properly served on Respondent on June 18, 2021. Respondent timely filed his Notice of Defense contesting the Accusation. The First Amended Accusation No. 800-2018-046939, 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 January 6, 2022. This stipulation shall serve as Respondent's Notice of Defense pursuant to Government Code section 11506, subdivision (a)(4).

5. A copy of First Amended Accusation No. 800-2018-046939 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2018-046939. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

ADMISSIONS

9. Respondent admits the truth of the Cause for Action in the First Amended Accusation No. 800-2018-046939, agrees that cause exists for license surrender, and hereby surrenders his Physician's and Surgeon's Certificate No. G 59708 for the Board's formal acceptance.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, 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 Surrender and 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 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. 800-2018-046939 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and 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 formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 59708, issued to Respondent MICHEL FRANCOIS LEVESQUE, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate No. G 59708 and the acceptance of the surrendered certificate by the Board shall constitute the action under section 822 of the California Business and Professions Code against Respondent. This stipulation constitutes a record of the action and shall become a part of Respondent's certificate 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. 800-2018-046939 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. 800-2018-046939 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

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

DATED: January 17, 2022

MICHEL FRANCOIS LEVESQUE, M.D.
Respondent

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

DATED: 1/27/2022

PETER R. OSINOFF, ESQ.
Attorney for Respondent

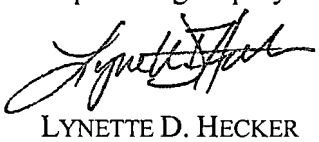
ENDORSEMENT

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

DATED: 1/27/2021

Respectfully submitted,

ROB BONTA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General



LYNETTE D. HECKER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2018-046939

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
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STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **Michel Francois Levesque, M.D.** **269 South Beverly Drive, Number 320** **Beverly Hills, CA 90212** **Physician's and Surgeon's Certificate No. G 59708,** Respondent.	Case No. 800-2018-046939 OAH No. 2021100810 **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 March 9, 1987, the Medical Board issued Physician's and Surgeon's Certificate Number G 59708 to Michel Francois Levesque, 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 October 31, 2022, unless renewed.

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JURISDICTION

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

4. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

STATUTORY PROVISIONS

5. Section 2234 of the Code, states:

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

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption 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.

6. Section 2266 of the Code states: The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

7. Section 822 of the Code states:

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

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COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case[1], with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DEFINITIONS

9. The adult spine is made up of approximately 24 bones (vertebrae) stacked on top of each other from the bottom of the skull to the pelvis. Each vertebra is composed of several parts that act as a whole to surround and protect the spinal cord and nerves, provide structure to the body and enable fluid movement in many planes. Each vertebra has two cylinder-shaped projections (pedicles) of hard bone that stick out from the back part of the vertebral body, providing side protection for the spinal cord and nerves. The pedicles also serve as a bridge, joining the front and back parts of the vertebra. Segments of the spine are classified as follows: cervical (vertebrae C1-7) which runs from base of the skull though the neck; thoracic (vertebrae T1-12) which runs from the base of the neck down the length of the rib cage; lumbar (vertebrae L1-5) which runs from the base of the rib cage to the pelvis, commonly referred to as the lower back; sacrum (vertebrae S1-5) which is the back part of the pelvis; and the coccyx (vertebrae C1-4) commonly referred to as the tailbone.

10. Spinal fusion surgery is designed to stop the motion at a painful vertebral segment, which in turn should decrease pain generated from the joint. Two vertebral segments of the spine must be fused together to stop the motion at one segment, so that an L4-L5 (lumbar segment 4 and lumbar segment 5) spinal fusion is actually a one-level spinal fusion. An L4-L5, L5-S1 fusion is a 2-level fusion. The pedicle screw, which is sometimes used as an adjunct to spinal fusion surgery, provides a means of gripping a spinal segment. The screws themselves do not

[1] As of November 18, 2021, Section 125.3 of the Code has been amended to remove subsection (k), which precluded the Board from collecting costs. The Board may collect investigation, prosecution, and other costs incurred for a disciplinary proceeding against a licensee beginning January 1, 2022.

fixate the spinal segment, but act as firm anchor points that can then be connected with a rod. The screws are placed at two or three consecutive spine segments (e.g. lumbar segment 4 and 5) and then a short rod is used to connect the screws. This construct prevents motion at the segments that are being fused. In a posterolateral approach, an incision is made down the middle of the lower back to expose the vertebrae to be fused.

11. Caudal is a term from Latin (*cauda* "tail") which describes how close something is to the trailing end of an organism/structure.

12. Dorsiflexion is the action of raising the foot upwards towards the shin. It means the flexion of the foot in the dorsal, or upward, direction. People use dorsiflexion when they walk. During the middle stages of weight bearing and just before pushing off the ground, the foot will reach its end range of dorsiflexion.

13. The extensor hallucis longus muscle is one of four muscles in the anterior compartment of the lower limb. The extensor hallucis longus specifically extends the hallux, dorsiflexes the foot at the ankle, and inverts the foot. The extensor hallucis longus muscle is susceptible to several pathologies, including nerve injury resulting in foot drop, tendonitis, tendon rupture, and anterior compartment syndrome.

14. Foramen is a naturally occurring opening, hole, or passage, especially in a bone. In the spine, the foramen is the opening for the spinal cord (vertebral foramen) and between vertebrae for nerve roots to exit the spinal cord (neural foramen or neuroforamen).

15. Foot drop, sometimes called drop foot, is a general term for difficulty lifting the front part of the foot. If someone has foot drop, the front and top of their foot might drag on the ground when they walk. Foot drop is not a disease. Rather, it is a sign of an underlying neurological, muscular or anatomical problem.

FACTUAL ALLEGATIONS

16. On or about June 11, 2014, Patient A[2] was seen by Respondent for consultation based on a twelve-month history of lumbar spine pain with intermittent radiation to the right lower extremity and left leg numbness. Conservative treatment measures had failed including

[2] The patient's name is redacted to protect her privacy.

medication, physical therapy, and epidural injections. Respondent indicated that Patient A was a candidate for surgical fusion at L4-5 and L5-S1 with pedicle screw instrumentation. Respondent discussed the risks and benefits with Patient A. Patient A decided to proceed with the surgery.

17. On or about June 18, 2014, Patient A was seen at the hospital for a pre-op visit. She was subsequently admitted for surgery and remained an inpatient from on or about June 26, 2014, through on or about June 29, 2014.

18. On or about June 26, 2014, Respondent performed surgical fusion at L4-5 and L5-S1 with pedicle screw instrumentation on Patient A. Respondent decompressed the neural elements at L4-5 and L5-S1, removed a portion of the discs at L4-5 and L5-S1, instrumented the spine with cages in the disc spaces at L4-5 and L5-S1 and pedicle screws at L4-L5-S1, and fused the spine both between the vertebral bodies and posterolaterally.

19. Post-operatively, Patient A had a new, immediate, and complete foot drop on the right. On or about June 27, 2014, physical therapy noted Patient A had right dorsiflexion weakness of 2-/5. On or about June 28, 2014, cardiology reported some improvement of numbness and weakness of right dorsiflexion. On or about June 29, 2014, physical therapy reported Patient A had slight right foot drop.

20. Despite seeing Patient A on additional occasions, Respondent only documented seeing Patient A in the hospital chart once, on or about June 28, 2014. On or about that date, Respondent noted that Patient A had improving numbness in the right foot, that Patient A's sensation was intact, and noted right extensor hallicus longus weakness at 4+/5. Respondent attributed this weakness to the surgical procedure and expected it to improve. Respondent did not order a post-operative CT scan while Patient A was an inpatient from the surgery.

21. Subsequent to discharge from the hospital, Patient A was seen by Respondent in his office on or about the following dates: July 14, 2014, September 7, 2014, November 5, 2014, April 12, 2015, and June 24, 2015. Though Respondent ordered physical therapy for Patient A as well as x-rays and electrodiagnostic studies, he did not order a post-operative CT scan for Patient A while she was under his care.

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22. Subsequently, Patient A submitted to other physicians with complaints of continuing lower extremity weakness and radiculopathy and dorsiflexion weakness/foot drop. On or about May 6, 2016, Patient A had a myelogram with post-myelogram CT scan of the lumbar spine which revealed that the course of the right L5 pedicle screw was extra-pedicular – it traversed caudal to the pedicle and crossed the L5-S1 foramen. On or about June 28, 2016, Patient A submitted to a surgery by another surgeon wherein, among other things, the right sided spinal hardware was removed. Thereafter, Patient A was noted to have had significant improvement in her pain and improved motor function in the right ankle and right big toe (foot drop).

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

23. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code, in that he engaged in act(s) or omission(s) amounting to gross negligence. The circumstances are set forth in paragraphs 14 through 20 above, which are incorporated here by reference as if fully set forth. Additional circumstances are as follows:

24. The standard of care requires a physician to order indicated and necessary diagnostic testing to confirm and/or reject potential etiologies for a condition. Following Respondent's surgery, Patient A had a new neurological deficit: weakness of the right ankle dorsiflexion strength/foot drop. Respondent attributed this to the surgical procedure. While manipulation and stretching of the nerve can produce such a deficit, it departs from the standard of care to rely upon the observations at surgery to assume the absence of a hardware complication. The performance of a post-operative CT scan is the standard of care in this situation. While the timing of the study may be dependent on the degree of the deficit and any associated symptoms, it is always necessary to confirm an absence of any contribution from the hardware placed. Respondent's failure to order a post-operative CT scan for Patient A based on the new neurological defect following surgery constitutes gross negligence.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

25. Respondent is subject to disciplinary action under section 2234, subdivision (c), in that he committed repeated acts of negligence in his care and treatment of Patient A. The circumstances are set forth in paragraph 14 through 22 above, which are incorporated here by reference as if fully set forth. Additional circumstances are as follows:

26. The standard of care requires that a physician produce and maintain medical records of the care provided. Following Patient A's surgery, Respondent recorded only one post-operative visit, on or about June 26, 2014, in the medical record though he saw and evaluated Patient A on several other occasions while she remained an in-patient through on or about June 29, 2014. Respondent's failure to record/document every time he saw and evaluated Patient A in the hospital postoperatively constitutes negligence.

THIRD CAUSE FOR DISCIPLINE

(Recordkeeping)

27. Respondent is subject to disciplinary action under section 2266, in that he failed to keep adequate and accurate records in his care and treatment of Patient A. The circumstances are set forth in paragraph 14 through 24 above, which are incorporated here by reference as if fully set forth.

CAUSE FOR ACTION

(Physical Illness Affecting Competency)

28. On or about July 17, 2021, Respondent signed a Disabled Physician Application for Exemption From Payment of Renewal Fees. This application was certified under penalty of perjury. Under the description of disabilities and explanation as to how the disability prevents the applicant from practicing medicine safely, Respondent's physician stated:

> [Respondent] has Parkinson's disease which causes tremors, decreased dexterity, bradykinesia and gait disturbances. Parkinson's disease is progressive and there are no disease modifying therapies although there are some symptomatic treatments that help some. Since [Respondent] is a neurosurgeon, all of these symptoms would interfere with his ability to operate and would endanger his patients. Parkinson's

disease can also reduce stamina and cause executive dysfunction whish [sic] would also interfere with his ability to practice medicine.

29. Respondent's physician stated that Respondent's disability began on or about August 28, 2017, and described it as a permanent condition.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 59708, issued to Respondent Michel Francois Levesque, M.D.;

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

3. Ordering Respondent Michel Francois Levesque, M.D., to pay the Board the costs of the investigation and enforcement of this case beginning on or about January 1, 2022, and if placed on probation, the costs of probation monitoring; and

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

DATED: JAN 06 2022

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

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