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

In the Matter of the First Amended Accusation Against:

TIMOTHY JAMES HUNT, M.D.

Physician's and Surgeon's Certificate G 82031

Respondent.

Agency Case No. 800-2018-045456;

800-2018-047461[1]

OAH No. 2020120652

DECISION AFTER NON-ADOPTION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 23, 2021, by videoconference.

Complainant William Prasifka was represented by Brian D. Bill, Deputy Attorney General (DAG). Respondent appeared and was represented by Gary Wittenberg,

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[1] The original Accusation, and the Notice of Automatic License suspension used two agency case numbers, while the First Amended Accusation used only the agency case number ending in 456, which is in the OAH records as the agency case number. The record does not disclose why the agency sometimes used two case numbers.

Baronov and Wittenberg, LLP.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 23, 2021.

During preparation of this Proposed Decision, the ALJ found Respondent's social security number within exhibit J, and he redacted it.

A proposed decision was issued on September 22, 2021. On November 23, 2021, Panel A of the Board issued an Order of Non-Adoption of Proposed Decision. Oral argument on the matter was heard by Panel A on February 9, 2022, with ALJ Danette Brown presiding. DAG Brian D. Bill appeared on behalf of the Complainant. Respondent was present and was represented by Gary Wittenberg, Attorney at Law. Panel A, having read and considered the entire record, including the transcript and the exhibits, and having considered the written and oral argument, hereby enters this Decision After Non-Adoption.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant filed the First Amended Accusation in his official capacity as executive director of the Medical Board of California (Board).[2]

2. (A) On November 22, 1995, the Board issued Physician's and Surgeon's Certificate number G 82031 to Respondent Timothy James Hunt, M.D. Respondent's Certificate was valid at all times from its issuance through November 12, 2019. It will expire on July 31, 2023, unless renewed.

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[2] The original Accusation was filed by Christine J. Lally, then the Interim Executive Director of the Board. She was also acting in her official capacity when she brought this administrative proceeding.

(B) Effective November 12, 2019, Respondent's Certificate was suspended pursuant to Business and Professions Code section 2236.1, subdivisions (a) and (d)(2). The Certificate remains suspended until further order of the Board.

3. Respondent filed a Notice of Defense after receipt of the Accusation. The allegations of the First Amended Accusation (FAA) are contested as a matter of law, without the filing of an additional pleading. (Gov. Code, § 11507.) However, at the outset of the hearing, Respondent stipulated to the truth of the key allegations in the FAA, set out in paragraphs 11 through 18 of that pleading, which include factual allegations, and three bases for discipline. All jurisdictional requirements have been met.

Respondent's Conviction

4. On September 27, 2019, in the United States District Court for the Central District of California, Respondent was convicted of one count of conspiracy in violation of 18 U.S.C. section 371. The conviction was entered in the case United States of America vs. Timothy James Hunt, based on Respondent's guilty plea, which had been entered by him on August 24, 2018. By his guilty plea Respondent was convicted of a felony. Respondent's guilty plea followed a plea agreement that he made with the United States, wherein he admitted various wrongful acts.[3]

5. As part of his plea agreement, the court dismissed fifteen other counts of the indictment against him. The court sentenced Respondent to serve two years in federal custody, and to be placed on supervised release for three years after Respondent was released from prison. He had agreed to forfeit three million dollars and the court ordered that forfeiture. The court barred Respondent from involvement in any enterprise that received federal or state funding for health programs unless permitted by his probation officer.

[3] Respondent testified that after learning of a co-conspirator's arrest, he obtained counsel and approached the prosecutors so that he could resolve the matter.

6. (A) The facts and circumstances of Respondent's crime are that between approximately 2008 and 2013 Respondent, other physicians, and others, entered into a scheme to receive kickbacks in exchange for referring spinal surgeries and other surgeries, to be performed at Pacific Hospital by others associated with that hospital. Further, in exchange for illegal compensation, Respondent referred patients needing magnetic resonance imaging, toxicology, and durable medical equipment to Pacific Hospital. By his plea agreement and agreement to forfeit property, Respondent acknowledged that he obtained at least 1.5 million dollars over a period of several years.

(B) The parties to the conspiracy attempted to disguise their illegal activity through the use of various written agreements and transactions, such as a loan, a sublease that was substantially below market value, an option agreement, and a pharmacy dispensing agreement. For example, Respondent obtained use of a medical office facility for $1,000 per month, when Pacific Hospital paid in excess of $11,000 per month for the space. To cover up that transaction, which was a way for Respondent to obtain the equivalent of $10,000 per month of illegal remuneration, Respondent entered into an agreement with another conspirator whereby the latter obtained an option to buy Respondent's medical practice. By January 2009, Respondent and other conspirators agreed that Respondent would be paid $30,000 per month under an option contract, as an inducement for Respondent referring surgeries to another physician, who then performed the surgeries as Pacific Hospital. Respondent was also compensated for referring other services, such as toxicology services, to Pacific Hospital and its affiliates.

7. Respondent served approximately seven and one-half months in a federal prison near Tucson, Arizona. Due to Covid 19, he was released early and placedon home confinement. He served 13 months of home confinement, which was terminated in July 2021. The balance of the sentence was reduced for good behavior. Respondent is now on supervised release, and will remain so through July 2024.

8. Because of the forfeiture order, Respondent lost his house. He and his wife now live in a "mother-in-law" apartment. Respondent indicated at the hearing

on February 9, 2022, that he has not paid back the three million dollars.

9. Respondent is in compliance with the terms of his parole.

Respondent's Evidence

10. Respondent is a highly trained physician and orthopedic surgeon. He graduated from the USC medical school in 1990 and had a one-year internship at County-USC in surgery. He was a resident in the West Virginia University Department of Orthopedics from 1991 to 1996, followed by a trauma fellowship at the University of Pittsburgh from 1996 to 1997. He came back to California in 1997, for a fellowship in Sports Medicine and Arthroscopy at UC San Diego. He was board-certified, though he lost that certification as a result of his criminal conviction.

11. Respondent's father was a physician, and Respondent grew up around his father's office, working in it during high school, and becoming certified to take X-Rays. He had hoped someday to practice medicine with his father. He did so after his fellowship at UC San Diego was completed, joining the practice in September 1998. The practice, with the name Intercommunity Medical Group, tended to be a workers' compensation practice.

12. Respondent's father died in approximately 2008. Before he passed, he told Respondent that he could not leave the practice to Respondent; he had to secure his wife's financial situation. He told Respondent that his wife—who was not Respondent's mother—would work something out with Respondent. That did not happen. His father's wife wanted much more for the practice than Respondent could pay. According to Respondent he was devastated by the situation.

13. Respondent was contacted by a doctor who was a part owner of Pacific Hospital. That person offered Respondent a loan, and a place to see patients. According to Respondent, he felt like someone had provided him a life raft. Later, however, not all the loan amount was forthcoming. Mr. Drobot, the majority owner of Pacific Hospital, got involved in the transaction. Respondent admitted at the hearing that he did not completely trust Drobot, but he went forward with an arrangement that

he thought would allow him to maintain his own practice. He understood that the money that would be paid to him would be a function of how many cases he provided. A lawyer for Drobot was involved in the transactions, and claimed all was above board, and Respondent's attorney reviewed the paperwork.

14. Respondent admitted at the hearing that he knew something was not right with the dealings he had with Drobot and the others, but he let his desperation drive his decision-making.

15. Respondent admitted his wrongdoing during the hearing, saying he has no one to blame but himself. Aside from losing his house, his conviction devastated his wife and three children. Respondent, once active in his church and community, has seen his standing in the community destroyed. An able surgeon, he is now employed in the shipping and receiving department of a bakery. Respondent exhibited remorse for his wrongdoing, but did not bemoan the circumstances he is now in, except to voice regret for how his criminal acts affected his wife and family.

Respondent's Character Witnesses

16. Respondent presented the testimony of three physicians who have known Respondent for many years. The witnesses also provided letters of support for Respondent, each letter signed under penalty of perjury. All three physicians were shocked at Respondent's criminal acts, all attested that in their dealings with him he has taken full responsibility for his crime, and all testified that he is a highly skilled surgeon whom they would refer cases to in the future, notwithstanding his conviction.

17. (A) Brian Magovern, M.D. is currently the Chief of Shoulder and Elbow Surgery at Harbor-UCLA Medical Center. He has been on the staff there since 2008. Dr. Magovern is fellowship trained in shoulder and elbow surgery and he is Board certified.

(B) Dr. Magovern has had many consultations with Respondent in the past. He considers Respondent to be very competent. One thing that stands out to Dr. Magovern is that Respondent always put the patient's interests first, and the witness

noted that Respondent is conservative about going forward with surgery.

(C) Dr. Magovern was shocked to learn of his colleague's crime, and when he expressed disbelief Respondent told him to believe it. Respondent has expressed to Magovern, on many occasions, his remorse and he has taken responsibility for his misconduct. Notwithstanding the conviction, Dr. Magovern would refer patients to Respondent in the future; he clearly believes that there would be no further misconduct by Respondent and Dr. Magovern is very confident of Respondent's skills.

18. (A) Hichman Siouty, M.D. is board certified in internal medicine, and he also testified on Respondent's behalf. Dr. Siouty has practiced in California for 34 years. Now exclusively in private practice, he was previously an Assistant Clinical Professor at UCLA. He has known Respondent professionally for many years, and he knew Respondent's late father as well.

(B) Dr. Siouty has referred patients to Respondent for many years, and has always had good feedback from those patients. Dr. Siouty had Respondent treat his shoulder and his knee. He finds Respondent to be a caring and very competent physician.

(C) Dr. Siouty was shocked at Respondent's wrongdoing, having never had reason to mistrust his honesty. Respondent has expressed remorse for his crime toDr. Siouty and has not shirked his responsibility for his misconduct. Despite the conviction, Dr. Siouty would refer patients to Respondent in the future; he trusts there will be no further misconduct, and he is confident of Respondent's skills.

19. (A) Brad S. Cohen, M.D. is a board-certified orthopedic surgeon. A graduate of Case Western School of Medicine, he was a surgical intern and orthopedicsurgery resident at New England Medical Center, Tufts University. From there he participated in the same sports medicine fellowship at UC San Diego that Respondent participated in, under the tutelage of James Tasto, M.D. He has been a clinical instructor at UC San Diego since 1997, when he first began practicing in California. Since Respondent and Dr. Cohen were the only two fellows in the UC San

Diego program, they became close personally and professionally.

(B) As with the other character witnesses, Dr. Cohen could not believe that Respondent had engaged in criminal conduct. He believes it was clearly an aberration, as he has known Respondent to be an ethical individual. Dr. Cohen believes, based on more than one conversation with Respondent, that Respondent is embarrassed, remorseful, and quite unlikely to break the law again.

(C) In his testimony and letter of support, Dr. Cohen praised Respondent's technical skills. He, like the other witnesses, would not hesitate to refer patients to Respondent in the future. Dr. Cohen believes that Respondent can be an asset to the community in the future, because he believes that Respondent would not transgress again, and because Respondent's considerable skills and knowledge can beused to care and treat many patients.

20. (A) Reverend Monseigneur Paul T. Dotson wrote a letter of support for Respondent, also signed under penalty of perjury. Monseigneur Dotson is pastor of St. Lawrence Martyr Catholic Church, and he has known Respondent for 19 years. He has a master's degree in history and finance, and he was an officer in the Air Force for 20 years.

(B) Monseigneur Dotson confirmed Respondent's testimony that the latter and his family have been active parishioners for many years, continuing to contribute to the parish after Respondent's children graduated from the parish school.

(C) Respondent has communicated with Monseigneur Dotson on a weekly basis, regarding his wrongdoing and the aftermath. Monseigneur Dotson recounted that he has observed Respondent's sorrow and humility in both how Respondent spoke about it, and in the latter's body language. Monseigneur Dotson believes the criminal conduct was aberrant, and that Respondent is deeply shamed, and is sincere in his desire to again practice medicine, and to redeem himself.

Other Matters

21. Respondent completed an ethics program, the PBI Medical Ethics and Professionalism Course, in June 2021. He was credited with 22 CME credit hours.

22. The witnesses, including Respondent, were credible in their testimony. This was both in terms of their demeanor, and in the content and consistency of their sworn statements. All answered questions in a straightforward manner, with no hint of prevarication.

23. Respondent recognizes that if he is allowed to retain his license, the road to actually practicing again will be difficult. He is currently banned from receiving payments from programs like Medi-Care, and that ban is, in his estimation, likely to continue for at least two and more likely four years. Obtaining privileges would be a problem given that his board certification was revoked. However, he is desirous of making the effort.

24. Respondent was respectful of the Board and this process during the proceeding.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to Business and Professions Code sections 2004 and 2227[4] was established, based on Factual Findings1 through 3.

2. Cause was established to discipline Respondent's Certificate pursuant to section 2236, subdivision (a), and California Code of Regulations, title 16 (CCR), section1360, because of Respondent's conviction of a crime substantially related to the duties, qualifications, and functions of a physician and surgeon. This Conclusion is based on Factual Findings 4 through 9, and Respondent's stipulation on the record.

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[4] Further statutory citations are to the Business and Professions Code unlessotherwise noted.

3. Cause was established to discipline Respondent's Certificate pursuant tosection 650, because Respondent was paid for patient referrals. This Conclusion is based on Factual Findings 4 through 9, and Respondent's stipulation on the record.

4. Cause was established to discipline Respondent's Certificate pursuant to section 2234, subdivision (e), for dishonest and corrupt acts, because Respondent accepted payment for patient referrals, and he conspired to do so, and to defraud state and federal health care programs. This Conclusion is based on Factual Findings 4through 9, and Respondent's stipulation on the record.

5. Grounds for discipline having been established, the issue becomes one of appropriate license discipline. The Board has developed disciplinary guidelines, entitled "Manual of Model Disciplinary Orders and Guidelines (2016)" (Disciplinary Guidelines) which are incorporated by reference into CCR section 1361, subdivision (a). The Disciplinary Guidelines provide guidance, at once general and specific, for what the disciplinary response should be for violations of the Medical Practice Act. The Disciplinary Guidelines provide that where an ALJ would depart from those Guidelines, for reasons such as mitigating circumstances, the age of the case or evidentiary problems, such issues should be identified.

6. (A) In summary, the Disciplinary Guidelines usually recommend a maximum discipline, and a minimum, though revocation is the only remedy for some violations, such as registering as a sex offender.

(B) The Disciplinary Guidelines do not recommend the discipline to be imposed for a violation of section 650, but they do for violations of section 2236, subdivision (a) (conviction of a substantially related crime) and for violations of section 2234, subdivision (e), dishonest and corrupt acts. When the wrongdoing is directly related to patient care or billing, the minimum recommended discipline is revocation stayed, one year of suspension, and seven years' probation. The maximum is outright revocation of the Certificate.

7. (A) The purpose of proceedings of this type is to protect the public, and

not to punish an errant licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.)

(B) While public protection is the highest priority of the Board and the ALJ, the Board and the ALJ "shall, whenever possible, take action that is calculated to aid in the rehabilitation of the licensee," (§ 2229, subd. (b).) However, that rehabilitative effort must not endanger the public. (Id., at subd. (c).)

8. "Remorse does not demonstrate rehabilitation." (*In re Conflenti* (1981) 29 Cal. 3d 120, 124) A truer indication of rehabilitation is sustained exemplary conduct over an extended period of time. (*Ibid.*; *see also In re Menna* (1995) 11 Cal.4th 975, 991.)

9. Here, Respondent was an active participant in a sophisticated conspiracy to defraud Medicare over a period of many years. Through his deceit for self-gain, he hid his crimes from his colleagues, who held him in high esteem and were shocked by his behavior. Moreover, he hid his illegal conduct from his patients and Medicare until he recognized that the conspiracy had been discovered by law enforcement. Despite knowing that what he was doing was wrong, he only came forward once he saw in the news that a co-conspirator had agreed to plead guilty to federal corruption charges.

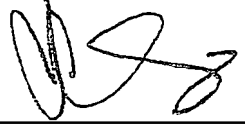
Respondent abused his position of trust as a physician to enrich himself and obtain over a million and a half dollars in illegal referral fees. While Respondent has taken steps to demonstrate he is on the road to rehabilitation, his conviction in September 2019 is relatively recent. Respondent is still on parole, and he has not started making payments toward the forfeiture of three million dollars. In light of the above, the Board has determined that Respondent has not demonstrated that financial strain would not prompt him to abuse his position of trust as a physician again. Consequently, his license must be revoked to protect the public.

ORDER

Certificate Number G 82031, issued to Respondent Timothy James Hunt, M.D., is hereby revoked.

The Decision shall become effective at 5:00 p.m. on April 6, 2022.

IT IS SO ORDERED this 7th day of March, 2022.



Laurie Rose Lubiano, J.D., Chair
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **TIMOTHY JAMES HUNT, M.D.** **2816 Baywater Avenue,** **San Pedro, CA 90731-6673** **Physician's and Surgeon's Certificate G 82031,** Respondent.	Case No. 800-2018-045456 OAH No. 2020120652 **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 (Board).

2. On November 22, 1995, the Board issued Physician's and Surgeon's Certificate Number G 82031 to Timothy James Hunt, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2023, unless renewed.

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JURISDICTION

3. This First Amended 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 2004 of the Code states:

The board shall have the responsibility for the following:

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

(b) The administration and hearing of disciplinary actions.

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

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

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

(f) Approving undergraduate and graduate medical education programs.

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

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

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

5. Section 2220 of the Code states:

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, including those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders, and the board shall have all the powers granted in this chapter for these purposes including, but not limited to:

(a) Investigating complaints from the public, from other licensees, from health care facilities, or from the board that a physician and surgeon may be guilty of unprofessional conduct. The board shall investigate the circumstances underlying a report received pursuant to Section 805 or 805.01 within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to Section 805 and Section 805.01.

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(b) Investigating the circumstances of practice of any physician and surgeon where there have been any judgments, settlements, or arbitration awards requiring the physician and surgeon or his or her professional liability insurer to pay an amount in damages in excess of a cumulative total of thirty thousand dollars ($30,000) with respect to any claim that injury or damage was proximately caused by the physician's and surgeon's error, negligence, or omission.

(c) Investigating the nature and causes of injuries from cases which shall be reported of a high number of judgments, settlements, or arbitration awards against a physician and surgeon.

6. Section 2228 of the Code states:

The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

(d) Providing the option of alternative community service in cases other than violations relating to quality of care.

STATUTORY PROVISIONS

7. Section 650 of the Code, states:

(a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

(b) The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

(c) The offer, delivery, receipt, or acceptance of any consideration between a federally qualified health center, as defined in Section 1396d(l)(2)(B) of Title 42 of the United States Code, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof to the health center entity pursuant to a contract, lease, grant, loan, or other agreement, if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center, shall be permitted only to the extent sanctioned or permitted by federal law.

(d) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility, provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

(e) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful to provide nonmonetary remuneration, in the form of hardware, software, or information technology and training services, as described in subsections (x) and (y) of Section 1001.952 of Title 42 of the Code of Federal Regulations, as amended October 4, 2007, as published in the Federal Register (72 Fed. Reg. 56632 and 56644), and subsequently amended versions.

(f) 'Health care facility' means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Public Health under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(g) Notwithstanding the other subdivisions of this section or any other provision of law, the payment or receipt of consideration for advertising, wherein a licensee offers or sells services through a third-party advertiser, shall not constitute a referral of patients when the third-party advertiser does not itself recommend, endorse, or otherwise select a licensee. The fee paid to the third-party advertiser shall be commensurate with the service provided by the third-party advertiser. If the licensee determines, after consultation with the purchaser of the service, that the service provided by the licensee is not appropriate for the purchaser or if the purchaser elects not to receive the service for any reason and requests a refund, the purchaser shall receive a refund of the full purchase price as determined by the terms of the advertising service agreement between the third-party advertiser and the licensee. The licensee shall disclose in the advertisement that a consultation is required and that the purchaser will receive a refund if not eligible to receive the service. This subdivision shall not apply to basic health care services, as defined in subdivision (b) of Section 1345 of the Health and Safety Code, or essential health benefits, as defined in Section 1367.005 of the Health and Safety Code and Section 10112.27 of the Insurance Code. The entity that provides the advertising shall be able to demonstrate that the licensee consented in writing to the requirements of this subdivision. A third-party advertiser shall make available to prospective purchasers

advertisements for services of all licensees then advertising through the third-party advertiser in the applicable geographic region. In any advertisement offering a discount price for a service, the licensee shall also disclose the regular, nondiscounted price for that service.

(h) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by that imprisonment and a fine of fifty thousand dollars ($50,000).

8. Section 2234 of the Code, states:

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

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

(b) Gross negligence.

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

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

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

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct which would have warranted the denial of a certificate.

(g) The 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.

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9. Section 2236 of the Code states:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1360, states:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

FACTUAL ALLEGATIONS

11. On or about November 29, 2017, an indictment was filed against Respondent in a proceeding entitled *United States of America v. Timothy James Hunt,* case number CR 17-00742-JLS-1. Respondent was charged with 16 counts, including: one count of conspiracy, in violation of Title 18 United States Code Section 371; eight counts of mail fraud, in violation of Title 18 United States Code Sections 1341 and 1346; five counts of engaging in interstate and/or foreign

travel or transportation in aid of racketeering enterprises, in violation of Title 18 United States Code Section 1952, Subdivision (a)(3); and two counts of knowingly and willfully soliciting or receiving remuneration for referrals for healthcare services paid for by a federal health care program, in violation of Title 18 United States Code Section 1320a-7b, Subdivision (b)(1)(A). The indictment alleged that beginning approximately 1998 through October 2013, Respondent and several other co-conspirators:

a. Participated in a sophisticated plan to defraud state and federal health care programs.

b. Paid and/or received remunerations for referring patients for medical services, i.e. kickbacks.

c. Performed various "kickback tainted surgeries and services," on the referred patients.

d. Used US Mail, wire communications, and/or facilities in interstate commerce to:

i. Communicate about patient referrals and underlying kickback arrangements;

ii. Submit claims to health care benefit programs for the kickback tainted surgeries and services; and

iii. Obtain payment from health care benefit programs for the kickback tainted surgeries and services.

12. On or about September 27, 2019, Respondent entered a plea of guilty to one count of conspiracy, in violation of Title 18 United States Code Section 371; the remaining counts were dismissed.

13. Respondent knowingly, intelligently, and voluntarily admitted the following was true:

a. Between 2008 and 2013, Respondent and other persons agreed to commit mail and wire fraud; interstate travel in aid of bribery; and solicitation, receipt, offering, or paying kickbacks in connection with a federal health care program.

b. Respondent became a member of the conspiracy, knew of at least one of its objectives, and intended to assist in the accomplishment of the objectives.

c. Respondent and/or other members of the conspiracy committed the 173 overt acts in furtherance of the conspiracy, as set forth in count one of the indictment.

14. Respondent also made numerous factual admissions in the change of plea form, including the following:

> Beginning in or around June 2008, through at least February 2013, Respondent and his co-conspirators agreed to participate and did, in fact, participate in an illegal arrangement to pay and receive kickbacks in exchange for referring surgeries and other patient-related services [to co-conspirator owned healthcare entities]. As part of the arrangement, [Respondent] agreed with [his co-conspirators] to receive proceeds of the kickback scheme, and subsequently participate in financial transactions over $10,000 involving proceeds from the kickback scheme...."
>
> To facilitate the payment of kickbacks, Respondent and his co-conspirators entered into written and verbal agreements to pay kickbacks in exchange for patient referrals for various services.
>
> Respondent referred spinal surgery candidates to various co-conspirators. In exchange for the referrals, various co-conspirators arranged for payments to be made to Respondent.
>
> Co-conspirators entered into various contractual relationships with [Respondent], including a loan, a substantially below-market sublease, an option agreement, and pharmacy dispensing contracts, to disguise [kickbacks paid to Respondent]..."
>
> Co-conspirators paid Respondent between $30,000 and $65,000 per month for spinal surgery referrals. Respondent also received kickbacks for patient referrals for routine medical services.
>
> Respondent and his co-conspirators knew the payment and/or acceptance of kickbacks for referral of patients was illegal.
>
> Between 2008 and February 2013, Respondent referred patients for surgeries and services that resulted in approximately $16 million dollars billed to state and/or federal health care benefit programs. Co-conspirators paid Respondent approximately $3.4 million dollars during this period, a substantial portion of which constitute illegal kickbacks.
>
> Respondent and/or various co-conspirators committed the 173 overt acts in furtherance of the conspiracy, as set forth in count one of the indictment.

15. On September 27, 2019, Respondent was sentenced to:

a. Serve a 24-month period of incarceration;

b. Serve a three (3) year period of post incarceration supervision;

c. Pay victim restitution and other fines and fees; and

d. Forfeit $3 million dollars, which Respondent admitted he obtained, received, and/or possessed as a result of his participation in the conspiracy.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

16. By reason of the facts alleged above in Paragraphs 11 through 15, Respondent Timothy James Hunt, M.D. is subject to disciplinary action under Business and Professions Code section 2236, subdivision (a), and California Code of Regulations, title 16, section 1360, in that he was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon.

SECOND CAUSE FOR DISCIPLINE

(Knowingly and Willfully Paying or Receiving Remuneration for Patient Referrals)

17. By reason of the facts alleged above in Paragraphs 11 through 15, Respondent Timothy James Hunt, M.D. is subject to disciplinary action under Business and Professions Code, section 650, in that Respondent paid for and/or received payments for patient referrals.

THIRD CAUSE FOR DISCIPLINE

(Engaging in Dishonest and/or Corrupt Acts)

18. By reason of the facts alleged above in Paragraphs 11 through 15, Respondent Timothy James Hunt, M.D. is subject to disciplinary action under Business and Professions Code, section 2234, subdivision (e), in that Respondent engaged in dishonest and/or corrupt acts by paying and/or receiving kickbacks for patient referrals, and conspiring to defraud state and federal health care programs.

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 82031, issued to Timothy James Hunt, M.D.;

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

3. Ordering Timothy James Hunt, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: AUG 18 2021

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

Complainant

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