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

In the Matter of the Second Amended Accusation Against: **Michael Gayle Klassen, M.D.** **Physician's and Surgeon's Certificate No. G 69478** **Respondent.**	**Case No.: 800-2018-044818**

DECISION

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

This Decision shall become effective at 5:00 p.m. on October 7, 2022.

IT IS SO ORDERED: September 8, 2022.

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D., Chair
Panel A

ROB BONTA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
WENDY WIDLUS
Deputy Attorney General
State Bar No. 82958
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 269-6457
Facsimile: (916) 731-2117
E-mail: Wendy.Widlus@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Second Amended Accusation Against: MICHAEL GAYLE KLASSEN, M.D. 3121 Middle Ranch Road Pebble Beach, California 93953-2953 Physician's and Surgeon's Certificate No. G 69478, Respondent.	Case No. 800-2018-044818 OAH No. 2021110707 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

2. Respondent Michael Gayle Klassen, M.D. (Respondent) is represented in this

proceeding by attorney Aaron T. Schultz of 2300 Contra Costa Boulevard, Suite 350 Pleasant Hill, California 94523-2398.

3. On August 13, 1990, the Board issued Physician's and Surgeon's Certificate No. G 69478 to Michael Gayle Klassen, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 800-2018-044818, and will expire on July 31, 2022, unless renewed.

JURISDICTION

4. Second Amended Accusation No. 800-2018-044818 was filed before the Board, and is currently pending against Respondent. The Second Amended Accusation and all other statutorily required documents were properly served on Respondent on April 5, 2022. Respondent timely filed his Notice of Defense contesting the Second Amended Accusation.

5. A copy of Second Amended Accusation No. 800-2018-044818 is attached hereto as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Accusation No. 800-2018-044818. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Second 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.

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

//

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Second Amended Accusation No. 800-2018-044818, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate Number G 39717.

10. For the purpose of resolving the Second Amended Accusation without the expense and uncertainty of further proceedings, 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 Second Amended Accusation No. 800-2018-044818.

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

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Second Amended Accusation No. 800-2018-044818 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED THAT Physician's and Surgeon's Certificate No. G 69478 issued to Respondent Michael Gayle Klassen, M.D. is revoked. However, the revocations are stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. STANDARD STAY ORDER. However, revocation stayed and Respondent is placed on probation for three years upon the following terms and conditions.

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

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

Respondent shall submit a certification of successful completion to the Board or its

designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

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

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

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

4. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree

to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Second Amended Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Second Amended Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Second Amended Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60

calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

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

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

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

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

8. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, in the amount of $ $6,390.00. (Six thousand three hundred ninety dollars zero cents). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of

probation.

Any and all requests for a payment plan shall be submitted in writing by respondent to the Board.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs.

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

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

10. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any

areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

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

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

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

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

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

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

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

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

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

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

16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which

may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

17. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Second Amended Accusation No. 800-2018-044818 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Aaron T. Schultz, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 4/10/2022

MICHAEL GAYLE KLASSEN, M.D.
Respondent

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

DATED: 4/11/2022

AARON T. SCHULTZ, ESQ.
Attorney for Respondent

//

//

//

//

//

ENDORSEMENT

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

DATED: April 12, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

Wendy Widlus

WENDY WIDLUS
Deputy Attorney General
Attorneys for Complainant

LA2020603891
65019698.docx

Exhibit A

Second Amended Accusation No. 800-2018-044818

ROB BONTA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
WENDY WIDLUS
Deputy Attorney General
State Bar No. 82958
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 269-6457
Facsimile: (916) 731-2117
E-mail: Wendy.Widlus@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Second Amended Accusation Against: **MICHAEL GAYLE KLASSEN, M.D.** **3121 Middle Ranch Road** **Pebble Beach, CA 93953-2953** **Physician's and Surgeon's Certificate No. G 69478,** **Respondent.**	Case No. 800-2018-044818 OAH No. 2021110707 **SECOND AMENDED ACCUSATION**

PARTIES

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

2. On August 13, 1990, the Board issued Physician's and Surgeon's Certificate Number G 69478 to Michael Gayle Klassen, 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, 2024, unless renewed.

JURISDICTION

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

5. Section 2234 of the Code 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 4955 of the Code states: Unprofessional conduct shall include, but not be limited to, the following:

...

(k) The abandonment of a patient by the licensee without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner

....

COST RECOVERY

8. Effective on January 1, 2022, section 125.3 of the Code was amended to provide as follows:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may 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.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.[1]

FACTUAL ALLEGATIONS

9. In 2017, Respondent practiced medicine in a private practice as an orthopedist. He closed his practice because he had financial difficulty after he went through a divorce. The practice also converted their medical records to an electronic medical record system. Those factors combined created a cash squeeze for Respondent.

10. On or about May 1, 2018, Respondent closed his practice. He filed bankruptcy on May 31, 2018.

11. The standard of care requires a physician who engages in surgery or interventional care to always have back-up call coverage or a back-up orthopedic surgeon to personally take over care if the physician is not immediately available to handle a particular call during the follow-up period for a surgery that he or she performed. As described below, there were no appropriate arrangements made for call coverage following the operations performed by Respondent that are described below, nor did Respondent take steps to assure that his patients could locate and call him in case of complications.

12. On April 30, 2018, a day before Respondent closed his practice, he operated on five

[1] Effective January 1, 2022, subdivision (k) of Section 125.3, which exempted physicians and surgeons from paying recovery of the costs of investigation and prosecution by the Board, was repealed.

patients at the Monterey Peninsula Surgery Center. In connection with those cases, he committed violations of the Medical Practice Act, as follows:

A. **Patient 1**[2]

Patient 1 is a 60-year-old female with a worker's compensation case. On April 30, 2018, Respondent performed an arthroscopy on her knee. Respondent's records show he failed to provide adequate notice to Patient 1 regarding his practice's closure. The Medical Board's website addresses this issue as follows:

> *Although a physician is allowed to sever or terminate the patient/physician relationship, in order to avoid allegations of patient abandonment (unprofessional conduct), a physician should notify patients of the following in writing when the physician wishes to discontinue care:*
>
> *The last day the physician will be available to render medical care, assuring the patient has been provided at least 15 days of emergency treatment and prescriptions before discontinuing the physician's availability.*
>
> *Alternative sources of medical care, i.e., refer patient to other physicians, by name, or to the local medical society's referral service.*
>
> *The information necessary to obtain the medical records compiled during the patient's care (whom to contact, how and where).*

Respondent failed to meet these requirements. First, he failed to refer to the Medical Board and California Medical Association (CMA) websites regarding closure of practice requirements. Second, he failed to include a copy of the claimed notice letter in the medical records of Patients 1 through 5. Third, he failed to retain a copy of the claimed notice letter. Finally, he failed to save a copy of the claimed notice letter in his computer system.

B. **Patient 2**

Patient 2 is a 51-year-old male. On April 30, 2018, Respondent performed arthroscopy and partial medial meniscectomy on the knee of Patient 2. Patient 2 had many medical problems and worker's compensation issues for which Respondent appeared to be treating him and directing treatment, particularly for his lumbar spine, with MRI scans; other medical follow-up; and medical direction. There was no reference to any follow-up for Patient 2's

[2] In the interest of privacy, the patients' names are rendered in this document by numbers and witnesses by initials.

medical conditions or any referrals for taking over as primary treating physician in the medical records maintained by Respondent. There were post-operative visits for three weeks following arthroscopy but, given the extent of his condition with grade 4 changes in the patellofemoral joint, as well as grade 4 changes in the femur and grade 3 changes in the tibial plateau, indicating advanced osteoarthritis, there was likely to be a lack of full recovery and a need for future treatment, injections, or consideration of more advanced surgery. The medical records do not reflect that any of this was provided. As with the other patients, Respondent claimed he sent a letter to all his patients, but his medical records contain neither a copy of such letter sent nor a chart note indicating that such a letter was sent to Patient 2.

C. **Patient 3**

Patient 3 is a 39-year-old male with a worker's compensation case. On April 30, 2018, Respondent operated on Patient 3 for right shoulder debridement, SLAP[3] repair, loose body removal, and rotator cuff repair. Patient 3 had severe and multiple medical conditions. He had two tibial fractures with IM rods and had not worked for over a year when he had the operation on his shoulder. The operation on his shoulder required a lengthy follow-up with maintenance of supervision and physical therapy to ensure that he had a maximum recovery, particularly in light of his other extremity injuries, making it even more important to have his other conditions to be well-situated. With rotator cuff repair and a SLAP lesion, there would normally be a minimum of three to four months of post-operative follow-up and supervised physical therapy, plus maintenance and evaluation after recovery with gradual transition and determination of his future ability to work and what restrictions for his future employment would be necessary. Respondent did not provide follow-up for his conditions. Respondent claimed that follow-up office visits occurred on May 2, 2018; May 21, 2018; May 22, 2018; June 5, 2018; June 11, 2018; and June 13, 2018; however, no records are available to show an actual meeting on those dates except for May 2, 2018. In regard to appropriate protocols for an office

[3] The term SLAP stands for Superior Labrum Anterior and Posterior. In a SLAP injury, the top (superior) part of the labrum is injured. This top area is also where the biceps tendon attaches to the labrum. A SLAP tear occurs both in front (anterior) and back (posterior) of this attachment point. The biceps tendon can be involved in the injury, as well.

closure, Respondent admitted that he did not refer or inform Patient 3 as to the information on the Medical Board website regarding office closures.

D. **Patient 4**

Patient 4 is a 33-year-old male. On April 30, 2018, he had left shoulder arthroscopy with anterior and posterior labral repair with six anchors and synovectomy due to instability. On May 21, 2018, the patient had a follow-up meeting with Respondent, complaining about bilateral shoulder pain. Patient 4 indicated that he was post-arthroscopy and needed to begin physical therapy. He had bilateral shoulder pain. Patient 4 had a very significant complex operation with six suture anchors in the labrum for chronic dislocation. In addition, Patient 4 had a contralateral shoulder condition which was anticipated to need surgery also. He had short-term follow-up, but his condition was going to require lengthy physical therapy, as well as close supervision to maximize improvement or the amount of damage that had occurred within his shoulder joint and was now repaired with six anchors, a significant number. Given the extent of the operation, a length of three to four months of physical therapy follow-up would be anticipated as well as future treatment for the contralateral shoulder. In fact, this follow-up did not occur and was not noted in the patient's medical records.

Concerning appropriate protocols for an office closure, Respondent admitted he did not inform or refer Patient 4 to the Medical Board website's information regarding office closure, as was also the case with Patient 1, referenced above in paragraph 12 A.

E. **Patient 5**

Patient 5 is a 78-year-old female who had severe arthritis. On April 30, 2018, she had arthroscopic knee surgery performed by Respondent. Respondent admitted that he did not refer her to the Medical Board website's specific information regarding office closures. Respondent failed to provide the required notice of closure to Patient 4, as was the case with Patient 1, referenced above in paragraph 12 A.

13. On September 22, 2020, during an interview, Respondent stated to Board representatives that he had sent letters to his patients informing them of the closure of his practice and explaining how they could obtain their medical records. He stated further that his office still

had his medical assistant (M), after he closed his practice, who voluntarily helped him receiving calls, assisting patients on their requests for their medical records, such as putting medical records on a disk, and sending them to requesting patients. Aside from the medical assistant, another employee (T) was hired and paid monthly to take care of patients' phone requests, he said.

A. Respondent claimed sending 4,000 to 6,000 letters to inform his patients regarding his closure, but neither a copy of such letter sent to Patients 1 through 5 was presented, nor that fact of sending the letter entered in the medical records. Respondent admitted that he did not refer to the specific information written by the Medical Board or the California Medical Association in regard to closing his practice. There was not a single copy of such a letter in any of the medical records. Respondent did not retain a copy of the letter, and he admitted that he did not even retain an electronic copy in his computer system. In fact, his office's closure was a lengthy process that was anticipated well before the actual date of closure.

B. Regarding Patient 2:

Respondent claimed in his interview that a follow-up meeting with Patient 2 was made on March 2, 2018; March 21, 2018; and June 25, 2018; however, the June 25, 2018 visit was not documented in the medical record, which reflects no such encounter. Respondent stated that he referred Patient 2 to Dr. H. (a neurologist) for a follow-up treatment for the patient's concussion, post-concussive syndrome. Also, he stated that he told Patient 2 to get physical therapy. Although Respondent claimed in his interview that he arranged referrals for his patients to three sources, Doctors R and T, both orthopedic surgeons, and to Natividad Medical Center, an orthopedic clinic, nothing in the medical records show any documentation indicating that Patient 2 was referred to any of those medical providers for post-operation care.

C. Regarding Patient 3:

At his interview, Respondent stated he was treating and directing treatment for Patient 3. Patient 3 had multiple medical issues, but after the surgery, there were no referrals to another physician for further treatment of Patient 3's neck pain, headaches,

left knee pain, post-concussion, left leg pain, and insomnia. Given the extent of Patient 3's condition, there was likely a need for future treatment and a consideration of more surgery, but none of this was provided to Patient 3. Respondent failed to show any proof that he informed Patient 3 about his closure.

14. Contrary to Respondent's statements at the subject interview, there were no notice letters to the patients regarding the closure of his practice in the medical records. The cited materials in the Board's website set forth this notice requirement, including information for closure of the practice, which includes sending out prior to closure a certified letter explaining the details and a return request so that it is ensured that the information has been received. Respondent failed to meet these requirements.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

15. Respondent is subject to disciplinary action under Code section 2234, subdivision (b), in that he was grossly negligent in conducting operations on Patients 1 through 5 the day before closing his practice. The circumstances and allegations set forth in Paragraphs 9 through 14, above, are incorporated as if fully set forth herein and as follows:

A. Respondent performed five operations on the day before his practice termination date. Respondent had no overriding reason why the five operations had to be performed on the day before closing his practice because they were elective, not traumatic operations, and could have been scheduled and performed ahead of time before his practice termination date.

B. Respondent failed to account for the 90-day follow-up period, which includes all surgical fees for orthopedic surgery to cover subsequent provisional complications, emergencies, interactions, and questions that can occur during the 90 days following an operation. In orthopedic surgery, unexpected emergencies, complications, and situations frequently arise.

//

//

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

16. Respondent is subject to disciplinary action under section Code 2234, subdivision (c), in that he engaged in repeated negligent acts in his care and treatment of Patients 1 through 5. The circumstances and allegations set forth in Paragraphs 9 through 15 above are incorporated by reference and re-alleged as if fully set forth herein. In addition, Respondent's management of care and inadequate medical record-keeping for Patients 1 through 5 constitutes negligence, and as follows:

A. Inappropriate protocol for office closure. In respect to his care and treatment of Patients 1 through 5, Respondent failed to follow appropriate professional protocols for office closure, which include informing the patients about the last day he would be available to render medical care, and his failure to refer his patients to other physicians, and his failure to inform patients how to get a copy of their medical records.

B. Respondent failed to provide appropriate follow-up regarding Patients 2 through 5, as follows:

1) Inappropriate follow-up as follows for Patient 2:

a) Lack of follow-up for treatment of his lumbar spine and MRI scans;

b) No medical reference to any follow-up for his medical conditions;

c) No referrals to provide for taking over as primary treating physician; and

d) Failure to provide future treatment, injections, or consideration of more advanced surgery.

2) Inappropriate follow-up as follows for Patient 3:

a) Failure to provide follow-up after operation on patient's shoulder; and

b) Failure to follow-up and supervise the physical therapy with maintenance and evaluation after recovery with gradual transition and determination of his future ability to work and what restrictions were necessary for his future

employment;

C. Inappropriate timing of operative procedure in anticipation of closing practice regarding Patients 1 through 5, as follows:

1) Failure to make statements indicating that he was going to close his practice following the surgery;

2) Failure to notify and to document in the medical records that his practice was closing following the surgery;

3) Failure to document that there was any indication that the surgery was so critical or emergent that it had to be done even though there would be no practice left following the surgery;

4) Scheduling and performing the surgery the day before office closure which is inconsistent with preparation for transition of care; and

5) Respondent failed to follow appropriate professional protocols as follows:

a) He failed to refer to the Board and CMA websites regarding closure of practice requirements;

b) He failed to include a copy of the claimed notice letter in all of his patients' medical records, including Patients 1 through 5; and

c) He failed to retain a copy of the claimed notice letter, either in physical form or in his computer system.

D. Respondent failed to provide for future medical care regarding Patient 4 and 5, as follows:

1) Regarding Patient 4:

a) Respondent failed to provide physical therapy supervision to maximize patient improvement and to limit the amount of damage that had occurred within his shoulder joint; and

b) Respondent failed to provide appropriate follow-up care needed for this patient's treatment for the collateral shoulder.

2) Regarding Patient 5:

a) Respondent failed to provide for future care that was anticipated, including a total knee arthroplasty and follow-up care, given the extent of the patient's degenerative changes with disability to the point of requiring a permanent parking placard for total disability for ambulation.

E. Respondent failed to follow protocol regarding Patients 1 through 5 as follows:

1) Respondent failed to refer to or to adhere to the guidance of the Board and CMA websites regarding closure of practice requirements; and

2) Respondent failed to include a copy of the claimed notice letter in all of his Patients' medical records, including Patients 1 through 5. Respondent failed to retain a copy of the claimed notice letter either as a physical document in his patient file or in his computer system.

THIRD CAUSE FOR DISCIPLINE

(Patient Abandonment)

17. Respondent is subject to disciplinary action under Code section 4955k, in that Respondent committed abandonment in his care and treatment of Patients 1 through 5. The circumstances and allegations outlined in Paragraphs 9 through 16 above are incorporated as if fully set forth herein. In addition, Respondent committed patient abandonment as follows:

A. Respondent failed to provide clear notice to Patients 1 through 5 that their treatment would be discontinued and failed to provide a reasonable opportunity for the patients to secure the services of another practitioner before discontinuance of treatment;

B. Respondent failed to provide follow-up arrangements and call coverage within the 90-period following surgical operations on the patients; and

C. Respondent's failure to provide his patients with information as to closing of his practice as provided by the Medical Board and the CMA, and the lack of follow-up arrangements and call coverage, constitute abandonment, an extreme departure from the standard of care.

//

FOURTH CAUSE FOR DISCIPLINE

(Inadequate and Inaccurate Medical Records)

18. Respondent is subject to disciplinary action under Code section 2266, and California Code of Regulations, title 16, section 1356.6, subdivision (b) (4), by failing to maintain adequate and accurate records of his care and treatment of Patients 1 through 5. The circumstances and allegations set forth in Paragraphs 9 through 17, above are incorporated by reference and re-alleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Incompetence)

19. Respondent is subject to disciplinary action under Code section 2234, subdivision (d), for incompetence in his care and treatment of Patients 1 through 5. The circumstances and allegations set forth in Paragraphs 9 through 18 above are incorporated by reference and re-alleged as if fully set forth herein. Respondent failed to follow well-recognized professional protocols for the closure of a medical practice, and failed to provide post-surgical follow-up care for Patients 1 through 5.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

20. Respondent is subject to disciplinary action under Code section 2234 for unprofessional conduct in his care and treatment of Patients 1 through 5. The circumstances, including the facts and allegations as set forth in Paragraphs 9 through 19 above, are 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 Number G 69478, issued to Respondent Michael Gayle Klassen, M.D.;

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

3. Ordering Respondent Michael Gayle Klassen, M.D. to pay the Board reasonable costs of investigation and prosecution incurred after January 1, 2022;

4. If placed on probation, ordering Michael Gayle Klassen, M.D. to pay the Board the costs of probation monitoring; and

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

DATED: APR 0 5 2022

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

Complainant

LA2020603891
64989631.docx