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

In the Matter of the Accusation Against: Que Anh Chu, M.D. Physician's and Surgeon's Certificate No. A 43191 Respondent.	Case No. 800-2019-055154

DECISION

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

This Decision shall become effective at 5:00 p.m. on October 4, 2022.

IT IS SO ORDERED September 27, 2022.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

ROB BONTA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
THOMAS OSTLY
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **QUE ANH CHU, M.D.** **2148 Wellington Dr.** **Milpitas, CA 95035-7512** **Physician's and Surgeon's Certificate No. A 43191** Respondent.	Case No. 800-2019-055154 **STIPULATED SURRENDER OF LICENSE AND ORDER**

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

PARTIES

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

2. Que Anh Chu, M.D. (Respondent) is represented in this proceeding by attorney Daniel Horowitz whose address is: P.O. Box 1547 Lafayette, CA 94549.

3. On or about October 14, 1986, the Board issued Physician's and Surgeon's Certificate No. A 43191 to Que Anh Chu, M.D. (Respondent). The Physician's and Surgeon's Certificate

was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2019-055154 and will expire on October 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2019-055154 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 20, 2022. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2019-055154 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2019-055154. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2019-055154, agrees that cause exists for discipline and hereby surrenders his Physician's and Surgeon's Certificate No. A 43191 for the Board's formal acceptance.

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

CONTINGENCY

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

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 43191, issued to Respondent QUE ANH CHU, M.D., is surrendered and accepted by the Board.

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

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

3. If he ever applies for licensure in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 800-2019-055154 shall be deemed to be true, correct and

admitted by Respondent when the Board determines whether to grant or deny the application or petition.

4. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $11, 798.75 prior to issuance of a new or reinstated license.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 800-2019-055154 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

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

DATED: 06/22/22

QUE ANH CHU, M.D.
Respondent

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

DATED: 06/22/22

Daniel Horowitz
Attorney for Respondent

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ENDORSEMENT

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

DATED: 7/18/2022

Respectfully submitted,

ROB BONTA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

Thomas Ostly

THOMAS OSTLY
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2019-055154

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

In the Matter of the Accusation Against:	Case No. 800-2019-055154
Que Anh Chu, M.D. **2148 Wellington Dr** **Milpitas, CA 95035-7512** **Physician's and Surgeon's Certificate No. A 43191,** Respondent.	**ACCUSATION**

PARTIES

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

2. On or about October 14, 1986, the Medical Board issued Physician's and Surgeon's Certificate Number A 43191 to Que Anh Chu, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein. The certificate is currently inactive and will expire on October 31, 2022, unless renewed.

JURISDICTION

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

STATUTORY PROVISIONS

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

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

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence/Dishonesty)

6. uBiome, Inc. was a biotechnology company based in San Francisco, CA that developed technology to sequence the human microbiome. Its main product, a "SmartGut" test, analyzed gut microbes in patients.

7. Staff Care, a unit of AMN Healthcare, provided the physician staffing to uBiome starting in 2017, and doctors were paid to approve uBiome tests.

8. In July, 2018 Respondent began working for AMN Healthcare, in the Staff Care unit. His job duties including preordering stool studies for patients who sent in their stool specimens for "SmartGut" testing to be performed by uBiome. The decision to order tests was based on patients filling out an online checklist of symptoms. There was no verification of these symptoms, further history or physical exam, or any direct communication with the patients prior to ordering tests.

9. Respondent relied solely on the online checklist to order tests. Respondent ordered expensive test kits ($2,970.00 per kit) sometimes up to six kits per patient. Respondent also ordered retesting of specimens without consultation with patients.

10. Patients were informed by uBiome there would be no charge to them for SmartGut testing, as payments could be used towards a patient's insurance deductible, without the patient spending their own money.

11. Respondent has no background in Microbiology, Infectious Diseases, Genetics or Intestinal Medicine. Prior to July 2018, his training was in Pediatrics and Anesthesia. During the time he ordered tests for uBiome, Respondent was not board certified in any specialty and had no active hospital privileges.

13. As an example of Respondent's involvement in uBiome, on October 24, 2017 a SmartGut test was ordered by uBiome for a patient who later filed a complaint with the Department of Consumer Affairs. The results of the test were normal. Respondent ordered additional tests for Patient, including the retesting of samples. Respondent failed to examine or interact directly Patient prior to ordering the laboratory tests. Respondent permitted his name and medical license to be used to preauthorize tests for Patient. After three normal tests, the fourth test was denied coverage by Patient's insurance carrier. Respondent never had any interaction with Patient before ordering the tests, after the testing was sent in, or after the results were returned.

15. Respondent is guilty of unprofessional conduct and Respondent's certificate is subject to discipline pursuant to Sections 2234 and/or 2234(b) and/or 2234(c) and/or 2234(d) and/or 2234(e) of the Code based upon gross negligence and/or repeated negligent acts, and/or incompetence and/or dishonest or corrupt acts as follows:

a. Respondent repeatedly ordering tests without any exam or consultation with patients

b. Respondent repeatedly ordered tests for patients, without any medical indication,

c. Respondent repeatedly ordered tests for patients, without knowledge or training as the validity or purpose of the tests, or whether there was any medical indication for the tests

d. Respondent repeatedly facilitated the submission of false insurance claims.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 43191, issued to Que Anh Chu, M.D.;

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

3. Ordering respondent, Que Anh Chu, M.D, to pay the Board the costs of the investigation and enforcement of this and, 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: APR 20 2022

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

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