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

In the Matter of the Accusation Against: Tsung-Lin Roger Tsai, M.D. Physician's and Surgeon's Certificate No. A 132950 Respondent.	Case No.: 800-2018-049896

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 March 2, 2023.

IT IS SO ORDERED: January 31, 2023.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
LATRICE R. HEMPHILL
Deputy Attorney General
State Bar No. 285973
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6198
Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Accusation Against: **TSUNG-LIN ROGER TSAI, M.D.** **9201 W Sunset Blvd Ste GF-1** **West Hollywood, CA 90069** **Physician's and Surgeon's Certificate No. A 132950,** Respondent.	Case No. 800-2018-049896 OAH No. 2021120339 **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 Latrice R. Hemphill, Deputy Attorney General.

2. Respondent Tsung-Lin Roger Tsai, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, whose address is: 5440 Trabuco Road, Irvine, CA 92620.

3. On or about October 11, 2014, the Board issued Physician's and Surgeon's Certificate No. A 132950 to 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. 800-2018-049896, and will expire on November 30, 2023, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-049896 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 October 26, 2021. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2018-049896 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2018-049896. 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 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 Accusation No. 800-2018-049896, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2018-049896, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. A 132950 to disciplinary action.

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 Accusation No. 800-2018-049896 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, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

///

///

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or 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. A 132950 issued to Respondent TSUNG-LIN ROGER TSAI, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

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 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. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision, Accusation, and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence

assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, 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. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and 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.

5. 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.

6. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, in the amount of $10,088.00 (ten thousand and eighty-eight dollars). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Payment must be made in full within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board of California. Any and all requests for a

payment plan shall be submitted in writing by Respondent to the Board. Failure to comply with the payment plan shall be considered a violation of probation.

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

7. 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.

8. 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.

9. 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.

10. 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 Boards'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; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

11. 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. This term does not include cost recovery, which is due within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board and timely satisfied. Upon successful completion of probation, Respondent's certificate shall be fully restored.

12. 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.

13. 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.

14. 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.

15. 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 Accusation No. 800-2018-049896 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, Raymond J. McMahon. 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: 09 / 27 / 2022

TSUNG-LIN ROGER TSAI, M.D.
Respondent

I have read and fully discussed with Respondent Tsung-Lin Roger Tsai, 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: September 27, 2022

RAYMOND J. MCMAHON
Attorney for Respondent

///

ENDORSEMENT

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

DATED: September 27, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

LATRICE R. HEMPHILL
Deputy Attorney General
Attorneys for Complainant

LA2021602956
65432572.docx

Exhibit A

Accusation No. 800-2018-049896

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
LATRICE R. HEMPHILL
Deputy Attorney General
State Bar No. 285973
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6198
Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Accusation Against: **TSUNG-LIN ROGER TSAI, M.D.** **9201 W Sunset Blvd., Suite GF-1** **West Hollywood, CA 90069** **Physician's and Surgeon's Certificate** **No. A 132950,** Respondent.	Case No. 800-2018-049896 **A C C U S A T I O N**

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 22, 2014, the Board issued Physician's and Surgeon's Certificate Number A 132950 to Tsung-Lin Roger Tsai, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2021, 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.

4. Section 2227 of the Code states:

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

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

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

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

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

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

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

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.

DEFINITIONS

7. Eschar is dead tissue that sheds or falls off from the skin. Eshcar is typically brown or black, and may be crusty.

8. Silvadene is a prescription antibacterial medicine used to treat the symptoms of wound infections.

9. Augmentin is a prescription medicine used to treat the symptoms of different infections caused by bacteria, such as skin infections.

10. Debridement is the removal of dead or infected skin tissue to help a wound heal.

FACTUAL ALLEGATIONS

11. In August 2018, Respondent worked as a sole practitioner and as an independent contractor at Beverly Hills Physicians (BHP), located at 215 S. La Cienega Blvd., Suite 100, Beverly Hills, CA 90211.

12. Patient A[1] is a thirty-seven (37) year-old woman who sought services in July 2018 for a breast augmentation.

[1] The patient is identified as "Patient A" in this Accusation to protect her privacy.

13. On or about July 28, 2018, Patient A presented to BHP for a breast augmentation consultation. Dr. I.A. of BHP conducted the consultation. During the consultation, it was noted that Patient A had a previous breast augmentation procedure completed in 2007 and liposuction performed in 2016. Dr. I.A. developed a plan to perform a vertical breast lift,[2] remove and replace the saline implants, and perform liposuction of the abdomen and flanks of the lower back.

14. Following the consultation, Patient A attempted to schedule the procedure with Dr. I.A. However, Dr. I.A. was not available and BHP recommended Respondent for the procedure.

15. On or about August 13, 2018, Patient A presented to Respondent for the first time. Respondent did not conduct another consultation but he completed a generic physical examination and gathered a pre-operative history. Respondent also explained the procedure he planned to perform.

16. According to Respondent's records, on August 13, 2018, he performed a breast augmentation removal and replacement with saline implants, along with a breast lift, using the Wise pattern technique.[3]

17. Following the procedure, Patient A was instructed to return in one week for a follow-up appointment.

18. On or about August 14, 2018, Patient A called Respondent's office complaining that something felt wrong. Patient A was instructed to keep taking her medication and ensured that she would be fine.

19. On or about August 20, 2018, Patient A returned to Respondent for her first post-operative visit. At this time, Respondent removed the wound dressing on Patient A's breasts and replaced the tape on her incisions. Patient A noticed that her breasts were blackened and she complained about the smell of her breasts. Respondent's records noted that each breast had problems with darkness and blistering on the skin and nipples. Respondent instructed Patient A to return in one week for suture removal.

---

[2] A vertical breast lift raises the breasts by removing excess skin and tightening the surrounding tissue to reshape and support the new breast contour. A vertical lift does not significantly change the size of the breasts or round out the upper part of the breast.

[3] The Wise pattern technique allows removal of skin in both vertical and horizontal dimensions, allowing for lifting and coning of the breast into a less ptotic shape.

20. Patient A continued to complain about healing after her procedure. Patient A's breast started opening up and began leaking pus. Patient A was also concerned that she was developing an infection from the procedure. Respondent assured Patient A that the hole would close on its own and indicated that she did not have an infection since she did not have a fever. Patient A insisted that she did have a fever and she felt ill.

21. On or about August 23, 2018, Patient A presented to Respondent. Respondent noted that flaps of skin were purple but not demarcated. Respondent treated the site with Silvadene.

22. On or about August 27, 2018, Patient A again presented to Respondent. He noted demarcated eschar and instructed Patient A to continue using the Silvadene.

23. On or about August 30, 2018, Patient A presented to Respondent. Respondent noted that the eschar was stable but Patient A had a mild fever. Respondent's plan was to continue the Silvadene daily and continue to watch the site closely.

24. On or about September 4, 2018, Patient A presented to Respondent but was seen by his colleague, Dr. M.A. A culture was taken at this time. Respondent spoke with Dr. M.A. following his evaluation, who noted obvious healing issues with ischemic right breast tissue and nipple/areola. He also noted that Patient A continued to have a mild fever but there was no implant exposure. Patient A's dressing was changed and Dr. M.A. started Patient A on 500 milligrams of Augmentin.

25. On or about September 7, 2018, Respondent received the culture results indicating the presence of E. Coli. Patient A was placed on Ciprofloxacin, a medication used to treat bacterial infections.

26. On or about September 13, 2018, Patient A called Respondent complaining that her wound was again opening. Patient A later presented to Respondent. Respondent found that the right implant was exposed and he made a recommendation to immediately remove the implant. According to Respondent's records, Patient A asked to see another provider before any removal. Respondent indicated that he would refer Patient A to another provider and provided her with a list of specialists.

///

27. On or about September 17, 2018, Patient A returned to Respondent, and he completed a bilateral implant removal and debridement.

28. Patient A sought care and treatment from Dr. J.B. beginning September 21, 2018. Dr. J.B. started Patient A on antibiotics and, to date, has performed multiple debridements and wound care.

FIRST CAUSE FOR DISCIPLINE

(Incompetence)

29. Respondent is subject to disciplinary action under Code section 2234, subdivision (d), in that he demonstrated incompetence and a lack of knowledge in the care and treatment of Patient A, as more particularly alleged in paragraphs 11 through 28, above, which are hereby incorporated by reference and alleged as if fully set forth herein. The circumstances are as follows:

30. During the procedure, Respondent made a vertical incision on each breast to remove the existing implant. A capsulotomy[4] was immediately performed and sizers were placed in the breasts. A triangular incision was then created above the areola and the incision was carried straight down. The medial and lateral flaps were then elevated and a central pedicle technique[5] was used to perform a Wise pattern breast lift. The medial and lateral flaps were elevated to ensure good blood supply to the nipple and tailor tacking of all excess skin was performed. Respondent completed the procedure by ensuring symmetry on both sides, removing the staples and sizers, and irrigating the breasts with triple antibiotic solution before closing the incisions using sutures.

///

///

///

---

[4] Capsulotomy is a procedure in which part of the capsule of scar tissue surrounding a breast implant is removed. This is performed as a means of fixing the most common complication of breast augmentation surgery.

[5] The pedicle technique is used to preserve the breast volume where maximum projection is desired, in the central portion of the breast. This technique requires the surgeon to leave an attached tissue graft with nerves and blood vessels that supply the breast.

31. The standard of care requires a plastic surgeon to have the knowledge of the basic anatomical blood supply to the breast and nipple areolar complex. Knowledge of the dominant arterial and venous supply of the breast helps the surgeon design the most robust flaps for the breast lift.

32. Respondent utilized a Wise pattern excision, together with a central pedicle breast lift, in a patient who had undergone previous breast augmentation with interruption of deep perforator blood supply. The techniques used were dangerous, high-risk, and contraindicated.

33. Patient A's previous surgery would have removed deep collateral blood supply to the breast and nipple areolar region. Consequently, the techniques used by Respondent interrupted crucial blood supply to the breast and areola.

34. Numerous less risky alternatives existed to accomplish Patient A's procedure without the unnecessary risk. In fact, during Patient A's initial consultation with Dr. I.A., it was determined that he would perform a vertical breast lift, which was less risky.

35. The standard of care requires that patients who undergo a breast lift procedure must be seen by the surgeon for follow-up within 24 hours. The blood supply to the nipple and areola must be monitored and negative and positive findings must be documented. Additionally, a physical evaluation must be completed and documented to ensure proper healing.

36. Early interventional modalities can sometimes be performed to salvage blood supply issues and skin compromise, which may arise in the early post-operative period, requiring timely follow-up.

37. Patient A was not scheduled to be seen by Respondent for her first post-operative appointment until seven days after the procedure. This is well beyond an early intervention period, in which Respondent could have diagnosed any issues, managed them, or intervened.

38. Further, when a patient presents with a significant degree of skin necrosis, vital signs should be monitored and early intervention is needed to prevent secondary infections and to possibly salvage the breast implants. Consideration and discussion for optional patient treatment should be documented.

///

39. Patient A presented to Respondent for multiple post-operative visits, during most of which she complained about the coloring of her breasts, the smell of her breasts, and a fever. During several post-operative visits, Respondent failed to record any vital signs and no intervention plan was discussed or occurred until an implant became exposed, on or about September 13, 2018.

40. Respondent's acts and omissions as set forth in paragraphs 29 through 39, above, whether proven individually, jointly, or in any combination thereof, constitute incompetence and lack of knowledge pursuant to section 2234, subdivision (d), of the Code. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts)

41. Respondent is subject to disciplinary action under Code section 2234 subdivisions (b) and (c), in that he was grossly negligent and/or repeatedly engaged in negligence in his care and treatment of Patient A. Complainant refers to and, by this reference, incorporates herein, paragraphs 11 through 40, above, as though fully set forth herein. The circumstances are as follows:

42. The standard of care requires a plastic surgeon to perform a thorough physical examination and review of relevant previous medical history in order to properly advise the patient and develop an appropriate care and treatment plan.

43. Respondent did not properly evaluate Patient A pre-operatively. Additionally, there is no evidence or documentation that Respondent consulted with Patient A prior to the date of surgery.

44. Respondent did not note or record any description of Patient A's prior breast augmentation procedure nor a description of the quality or quantity of her breast tissue before the present procedure. Respondent's records did not indicate that he had a discussion with Patient A regarding the different options of breast lifting available, or that he articulated a clear plan in light of this being Patient A's second augmentation procedure.

///

45. The standard of care requires that all patients undergoing a surgical procedure should review, understand, consent to, and sign an informed consent document regarding the procedure to be performed. However, when a secondary breast augmentation procedure is to be performed on a patient with obvious past blood supply interruption caused by the prior surgery, the standard of care requires the surgeon to explain in detail the material risks to the patient and not rely on boilerplate and template consent forms. Since the risks are greater with any secondary blood supply altering breast surgery, a surgeon is required to outline the heightened risks and exercise caution commensurate with that heightened risk.

46. Patient A was given a generic boilerplate consent form that was a template. The consent form did not reflect the heightened degree of risk for the procedure to be performed by Respondent.

47. Respondent's acts and omissions as set forth in paragraphs 41 through 46, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence and/or repeated negligence pursuant to section 2234, subdivisions (b) and (c), of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records)

48. Respondent is subject to disciplinary action under Code section 2266 in that he failed to maintain adequate and accurate records in his care and treatment of Patient A, as more particularly alleged in paragraphs 11 through 28, 35, 38 through 39, and 42 through 46, above, which are hereby incorporated by reference and alleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

49. Respondent is subject to disciplinary action under Code section 2234, subdivision (a), in that he engaged in unprofessional conduct. The circumstances are as follows:

50. The allegations in the First, Second, and Third Causes for Discipline, in paragraphs 29 through 48, above, are incorporated herein by reference as if fully set forth.

///

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 132950, issued to Respondent Tsung-Lin Roger Tsai, M.D.;

2. Revoking, suspending or denying approval of Respondent Tsung-Lin Roger Tsai, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Tsung-Lin Roger Tsai, 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: OCT 26 2021

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

LA2021602956
64577767.docx