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

In the Matter of the Second Amended Accusation Against:	)	
ASHISH VIRENDRA DESAI, M.D.	)	**Case No. 800-2017-039031**
Physician's and Surgeon's Certificate No. A90144	)	
Respondent	)	

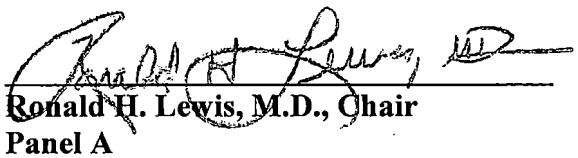
DECISION

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 November 27, 2019.

IT IS SO ORDERED October 28, 2019.

MEDICAL BOARD OF CALIFORNIA



Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
REBECCA D. WAGNER
Deputy Attorney General
State Bar No. 165468
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3760
Facsimile: (415) 703-5480
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: **ASHISH VIRENDRA DESAI, M.D.** **2674 E. Main Stret #E334** **Ventura, CA 93003** **Physician's and Surgeon's Certificate No. A 90144** Respondent.	Case No. 800-2017-039031 OAH No. 2019040314 **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. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Rebecca D. Wagner, Deputy Attorney General.

2. Respondent Ashish Virendra Desai, M.D. (Respondent) is represented in this proceeding by attorney Marvin H. Firestone, whose address is: 1700 South El Camino Real, Suite 204, San Mateo, CA 94402.

3. On or about February 11, 2005, the Board issued Physician's and Surgeon's Certificate No. A 90144 to Ashish Virendra Desai, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 800-2017-039031, and will expire on January 31, 2021, unless renewed.

JURISDICTION

4. Second Amended Accusation No. 800-2017-039031 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 September 28, 2018. Respondent timely filed his Notice of Defense contesting the Second Amended Accusation.

5. A copy of Second Amended Accusation No. 800-2017-039031 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 Second Amended Accusation No. 800-2017-039031. Respondent has also carefully read, fully discussed with 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 does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in the Second Amended Accusation No. 800-2017-039031 and that he has thereby subjected his license to disciplinary action.

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

CONTINGENCY

11. 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.

12. 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.

13. 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 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 90144 issued to Respondent Ashish Virendra Desai, M.D. is publicly reprimanded pursuant to California Business and Professions Code § 2227(a)(4). This Public Reprimand, which is issued in connection with Respondent's actions as set forth in Second Amended Accusation No. 800-2017-039031, is as follows:

> On October 12, 2017, Respondent was the anesthesiologist in attendance for the scheduled removal of the Mediport of Patient P-1 and inadvertently administered 2% lidocaine instead of the intended 1% lidocaine. On March 9, 2016, Respondent did not document the administration of Propofol in Patient P-2's anesthesia record.

A. EDUCATION COURSE

Within 30 calendar days of the effective date of this Decision, Respondent shall enroll in 20 hours of CME course(s) on medical record keeping, prescribing, and ethics, 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 20 hours of CME course(s) on medical record keeping, prescribing, and ethics, not later than three (3) months after Respondent's initial enrollment. The 20 hours of CME course(s) on medical record keeping, prescribing, and ethics, shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

CME course(s) on medical record keeping, prescribing, and ethics, 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 20 hours of the required course(s), or not later than 15 calendar days after the effective date of the Decision, whichever is later.

Respondent understands that failure to submit and/or complete the 20 hours of CME course(s) on medical record keeping, prescribing, and ethics, as set forth above, would constitute unprofessional conduct and grounds for further disciplinary action. If Respondent fails to enroll, participate in, or successfully complete the 20 hours of CME course(s) 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.

In consideration for his agreement to complete the 20 hours of CME course(s) on medical record keeping, prescribing, and ethics, as set forth above, Respondent shall be publicly reprimanded as set forth in the public letter of reprimand, as set forth above in Paragraph 13(A).

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Marvin H. Firestone. 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: 8/13/19

ASHISH VIRENDRA DESAI, M.D.
Respondent

I have read and fully discussed with Respondent Ashish Virendra Desai, 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: 8/16/19

MARVIN H. FIRESTONE
Attorney for Respondent

ENDORSEMENT

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

DATED: 8-20-2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

REBECCA D. WAGNER
Deputy Attorney General
Attorneys for Complainant

SF2018201294

Exhibit A

Second Amended Accusation No. 800-2017-039031

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
REBECCA D. WAGNER
Deputy Attorney General
State Bar No. 165468
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3760
Facsimile: (415) 703-5480
E-mail: Rebecca.Wagner@doj.ca.gov
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 29 20 19
BY _____ ANALYST

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

In the Matter of the Second Amended Accusation Against: **Ashish Virendra Desai, M.D.** **2674 E. Main Street #E334** **Ventura, CA 93003** **Physician's and Surgeon's Certificate No. A 90144,** Respondent.	Case No. 800-2017-039031 **SECOND AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Second Amended Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about February 11, 2005, the Medical Board issued Physician's and Surgeon's Certificate Number A 90144 to Ashish Virendra Desai, 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 January 31, 2021, 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 unless otherwise indicated.

4. Section 2004 of the Code provides, in pertinent part, that the Medical Board shall have responsibility for:

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

"(b) The administration and hearing of disciplinary actions.

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

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

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

". . . ."

5. 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."

6. 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.

". . . .

"(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.

". . . ."

7. 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."

FACTS

8. At all times relevant to this matter, Respondent was licensed and practicing medicine in Oakland, California.

9. On October 12, 2017, Respondent was the anesthesiologist in attendance for the scheduled removal of a Mediport[1] from Patient P-1[2] that had previously been inserted for purposes of chemotherapy for acute PreB-cell lymphoblastic leukemia. Respondent intended to place a tight tourniquet on the patient's IV arm to induce a mini-Bier Block[3] with 1% lidocaine to numb the arm so that an injection of Propofol would not be painful.

10. Instead, Respondent administered 2% lidocaine (double the intended 1% dose) utilizing a tourniquet that was not tight enough to constrict the flow of lidocaine into the blood stream. Patient P-1 suffered an apparent iatrogenic seizure.[4] Respondent administered an antidote to overdose and secured the patient's airway with a Laryngeal Mask Airway and the patient emerged from anesthesia without complications.

11. On March 9, 2016, Respondent was the anesthesiologist in attendance for the radiation treatment of Patient P-2, a four-year-old female with a history of brainstem cancer. Respondent administered Propofol, however, he failed to document that in the anesthesia record. Respondent acknowledged in a subject interview conducted on June 18, 2018 that he should have documented the administration of Propofol and that he failed to complete the proper documentation.

---

[1] A catheter which connects a port to a vein under the skin and is used to inject drugs and draw blood samples with less discomfort for patients receiving chemotherapy.

[2] The patients are designated in this document as Patient P-1 and P-2 to protect their privacy. Respondent knows the name of the patients and can confirm their identities through discovery.

[3] A common technique to infuse lidocaine prior to an injection of Propofol (used to relax the patient before and after general anesthesia) to prevent the pain from the injection.

[4] A seizure caused by medications, surgical therapy, medical procedures and diagnostic tests.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Repeated Negligent Acts)

12. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivisions (a) (violating the Medical Practice Act) and (c) (repeated negligent acts), of the Code in that Respondent engaged in conduct described above including, but not limited to, the following:

A. Respondent administered an overdose of Lidocaine and failed to appropriately apply a tourniquet during the anesthesia treatment of P-1, placing the patient at risk of an iatrogenic seizure.

B. Respondent failed to document the administration of Propofol to P-2 during peri-anesthetic care.

SECOND CAUSE FOR DISCIPLINE

(Inadequate Recordkeeping)

13. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2266 (inadequate records) of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent failed to document the administration of Propofol during peri-anesthetic care of P-2.

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 90144, issued to Ashish Virendra Desai, M.D.;

2. Revoking, suspending or denying approval of Ashish Virendra Desai, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Ashish Virendra Desai, 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: July 29, 2019

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SF2018201294