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

In the Matter of the Fourth Amended Accusation and Petition to Revoke Probation Against:	)	
Donald Woo Lee, M.D.	)	**Case No. 800-2017-037665**
Physician's and Surgeon's Certificate No. A 56294	)	
Respondent	)	

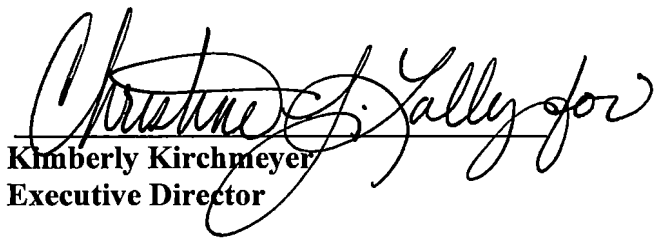
DECISION

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 November 7, 2019.

IT IS SO ORDERED October 31, 2019.

MEDICAL BOARD OF CALIFORNIA



Kimberly Kirchmeyer
Executive Director

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
EDWARD KIM
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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 Fourth Amended Accusation and Petition to Revoke Probation Against: **DONALD WOO LEE, M.D.** **Physician's and Surgeon's Certificate No. A 56294,** Respondent.	Case No. 800-2017-037665 OAH No. 2017120299 **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. 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 Edward Kim, Deputy Attorney General.

2. Donald Woo Lee, M.D. (Respondent) is represented in this proceeding by attorney Vincent J. LaBarbera Jr., Esq., whose address is: 4100 Newport Place Drive, Suite 620 Newport Beach, CA 92660.

3. On or about August 21, 1996, the Board issued Physician's and Surgeon's Certificate No. A 56294 to Respondent. The Physician's and Surgeon's Certificate was in full force and

effect at all times relevant to the charges brought in Fourth Amended Accusation and Petition to Revoke Probation No. 800-2017-037665 and will expire on August 31, 2020, unless renewed.

JURISDICTION

4. Fourth Amended Accusation and Petition to Revoke Probation No. 800-2017-037665 was filed before the Board, and is currently pending against Respondent. Fourth Amended Accusation and Petition to Revoke Probation No. 800-2017-037665 and all other statutorily required documents were properly served on Respondent on September 25, 2019. Respondent filed his Notice of Defense contesting Accusation and Petition to Revoke Probation No. 800-2017-037665. A copy of Fourth Amended Accusation and Petition to Revoke Probation No. 800-2017-037665 is attached hereto 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 Fourth Amended Accusation and Petition to Revoke Probation No. 800-2017-037665. 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 Fourth Amended Accusation and Petition to Revoke Probation No. 800-2017-037665; 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 Fourth Amended Accusation and Petition to Revoke Probation No. 800-2017-037665, agrees that cause exists for discipline and hereby surrenders his Physician's and Surgeon's Certificate No. A 56294

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 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.

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 and the following Disciplinary Order, the Board agrees that this Stipulated Settlement and Disciplinary Order shall fully resolve and conclude this matter (Accusation No. 800-2017-037665), as well as the Board investigation number 800-2017-038964.

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 Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 56294, issued to Respondent Donald Woo Lee, 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. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement 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 reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in the Fourth Amended Accusation and Petition to Revoke Probation No. 800-2017-037665 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

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 the Fourth Amended Accusation and Petition to Revoke Probation No. 800-2017-037665 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 Vincent J. LaBarbera Jr., Esq. 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: 10/17/19

DONALD WOO LEE, M.D.
Respondent

I have read and fully discussed with Respondent Donald Woo Lee, 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: Oct. 17, 2019

VINCENT J. LABARBERA JR.,
Attorney for Respondent

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: 10-17-19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

EDWARD KIM
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Fourth Amended Accusation and Petition to Revoke Probation No. 800-2017-037665

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept 25 2019
BY: ANALYST

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

In the Matter of the Fourth Amended Accusation and Petition to Revoke Probation Against: **DONALD WOO LEE, M.D.** **31812 Country View Rd.** **Temecula, CA 92591-4004** **Physician's and Surgeon's Certificate No. A 56294,** **Respondent.**	Case No. 800-2017-037665 OAH No. 2017120299 **FOURTH AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") brings this Fourth Amended Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about August 21, 1996, the Medical Board issued Physician's and Surgeon's Certificate Number A56294 to Donald Woo Lee, 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 August 31, 2020, unless renewed.

JURISDICTION

3. This Fourth Amended Accusation and Petition to Revoke Probation ("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 which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

"(g) The practice of medicine from this state into another state or country without meeting

the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated 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 2238 of the Code states: "A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

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."

INITIAL FACTUAL ALLEGATIONS

Patient A

8. On or about January 29, 2014, Respondent, an internist, saw Patient A,[1] an 82-year-old male and his primary care patient. Patient A had fallen, landed on his left hand, and lacerated the anterior surface of his hand. Although Respondent addressed the laceration with sutures, he failed to order x-rays of the left hand, and failed to refer the patient to an orthopedics specialist. Respondent documented that he fixed a dislocation of Patient A's fifth finger by pulling the finger and popping it back into place. Respondent also ordered a seven-day supply of an antibiotic (Keflex) for the patient.

9. On or about February 5, 2014, Respondent reassessed Patient A. Although Respondent wrote that the wound was healing well, he failed to assess the neuromuscular function of the patient's hand and/or failed to adequately document that he did so.

10. On or about February 12, 2014, Respondent removed the sutures on the patient's left hand. Again, Respondent failed to perform a neuromuscular examination of the hand and/or failed to adequately document that he did so.

[1] Patient initials are used based on privacy concerns.

11. On or about February 24, 2014, Patient A called Respondent's office, reported that his left hand was swollen, and asked if he needed more antibiotics. Respondent then ordered a 10-day supply of an antibiotic (Augmentin) for Patient A without examining the patient.

12. On or about March 26, 2014, Respondent saw Patient A with complaints of pain and an inability to move the fingers of his left hand. However, Respondent failed to assess the neuromuscular function of the patient's hand and/or failed to adequately document that he did so. In addition, although Respondent advised Patient A to start exercising his left hand, he did not document the specific exercises he instructed the patient to perform.

13. On or about April 14, 2014, Patient A called Respondent's office and requested an x-ray of his left hand and a referral to a specialist because he could not make a fist or close his hand. Respondent then ordered x-rays of Patient A's left hand and referred the patient to an orthopedic surgeon.

14. On or about May 2, 2014, x-rays of Patient A's left hand revealed fractures of the proximal phalanges of the third and fourth fingers. Respondent admitted during his interview with the Board that he never viewed the patient's x-rays.

15. On or about May 21, 2014, an orthopedic surgeon, Dr. J.P., assessed Patient A and on or about September 8, 2014, Dr. J.P. operated on the Patient A's left hand. Nevertheless, the patient did not regain normal function of his hand.

Pre-Signed Prescriptions

16. On or about October 8, 2015, agents of the federal government searched Respondent's office at 10241 Country Club Drive, Suite H, Mira Loma, California 91752 and found blank prescription scripts pre-signed by the Respondent. On or about, June 5, 2018, an investigator of the Health Quality Investigations Unit of California's Division of Investigations interviewed Respondent. During the interview, Respondent admitted that the pre-signed prescriptions seized by the federal agents were his scripts. He further explained that he pre-signed prescriptions and left them in unlocked drawers in his offices to facilitate the ability of his medical assistants to order medications for his patients when he was absent. He further explained that he thought the practice was legal and continued to engage in pre-signing blank prescriptions

until at least in or around October 2015 when his Mira Loma office was searched by federal agents. In addition, a letter dated August 13, 2015, stated that Respondent had terminated the employment of one of his medical assistants, M.B., because she had ordered narcotics for patients with prescription scripts that had been pre-signed by him. Respondent's practice of pre-signing prescriptions presented a risk to patients who could have received medications that had the potential to be ineffective and/or harmful for them, including without limitation, as a result of their issuance by his medical assistants.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

17. Respondent is subject to disciplinary action under Code section 2234, subdivision (b), in that he committed gross negligence. The circumstances are as follows:

18. The allegations in paragraphs 8 through 16, inclusive, above are incorporated herein by reference as if fully set forth.

19. On or about January 29, 2014, and thereafter, Respondent was grossly negligent when he failed to either perform neuromuscular examinations on Patient A (who had been injured from a fall), and/or failed to document that he performed such neuromuscular examinations.

20. On or about January 29, 2014, and thereafter, Respondent was grossly negligent when he prescribed an antibiotic to Patient A before examining him.

21. On or about January 29, 2014, and thereafter, Respondent was grossly negligent when he failed to order x-rays for Patient A during his first appointment with this elderly patient who had fallen and injured his hand.

22. On or about January 29, 2014, and thereafter, Respondent was grossly negligent when he failed to investigate and/or review the results of the x-rays he had ordered for Patient A.

23. On or about January 29, 2014, and thereafter, Respondent was grossly negligent when he failed to promptly refer Patient A, an elderly patient with a hand injury, to an orthopedic surgeon.

24. From at least in or around 2000 and thereafter, Respondent's practice of pre-signing blank prescription scripts represents gross negligence, including without limitation, on or about

April 15, 2015, and July 29, 2015, when his medical assistant illicitly used Respondent's pre-signed prescriptions, and October 8, 2015.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence - Patient C)

25. Respondent is subject to disciplinary action under Code sections 2234, subdivision (b), in that he committed gross negligence related to the provision of medical services to Patient C. The circumstances are as follows:

Patient C

26. On or about January 30, 2016, Respondent saw Patient C, a 69-year-old woman with symptomatic vein disease of the bilateral lower extremities with a history of hypothyroidism and hypertension. Respondent failed to obtain an adequate history for Patient C, including her current list of medications at this visit. A receptionist asked Patient C to fill out her name and insurance information only. When she asked a member of his staff about HIPAA, the staff member seemed "confused," and she was not provided any information regarding privacy rights or asked to sign a form related to HIPAA. Initially, a nurse saw her and obtained minimal information from her. A technician then performed an ultrasound of her leg veins. Afterwards, she was brought to another room where Respondent and three other people were present and a table was set up to do a vein procedure on each leg. At that point, she felt very uncomfortable and wished to speak with her primary care physician before proceeding with the procedures. Respondent told her that other doctors would not understand the vein procedures. Thereafter, the patient sought treatment from a different doctor who performed bilateral greater saphenous vein ablations and a series of separate sessions of sclerotherapy.

27. Respondent's records for Patient C fail to adequately document her past medical history and/or surgical history. Respondent also failed to perform and/or document an adequate physical exam, including examination of the patient's heart, lungs, abdomen and extremities as related to veins. Respondent's certified records include an unsigned form acknowledging receipt of privacy practices and a health questionnaire which was not filled out. During his interview with an investigator of the Department of Consumer Affairs, Respondent stated that he did not

have much independent recollection of the patient, but that he did recall the unusual occurrence that the patient initially stated that she had tried conservative therapy with stockings, but then later stated that she had not tried stockings. Respondent stated he advised her to try conservative therapy first. He also stated that he would not normally do vein procedures the same day as the ultrasound and that he did not plan procedures on this patient at that initial visit.

28. Respondent's records for Patient C fail to document that the patient received any notification of the office privacy practices. Further, they lack an adequately complete past medical history for her. Respondent also failed to document that the patient had a history of smoking and hypertension, and failed to record any vital signs for her. Her medications, allergies, smoking history were all not documented as well. Risk factors for peripheral vascular disease and cardiac disease are important for vein patients because this may influence treatment decisions. If the patient has significant vascular disease it may harm them to ablate veins which may be needed in the future for bypass surgery. The lower extremity pulses should also be examined because an abnormal exam may also influence the choice of compression therapy and decision to perform a procedure. A patient with abnormal peripheral pulses may not be a candidate for compression therapy and/or ablation without further non-invasive testing.

29. On or about January 30, 2016, and thereafter, Respondent was grossly negligent when he failed to provide and/or document the provision of office privacy practices to Patient C.

30. On or about January 30, 2016, and thereafter, Respondent was grossly negligent when he failed to perform and/or document an adequately complete history and physical exam for Patient C (a patient with vein disease).

THIRD CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

31. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that Respondent committed repeated negligent acts. The circumstances are as follows:

32. The allegations of the First and Second Causes for Discipline are incorporated herein by reference as if fully set forth.

33. Each of the alleged acts of gross negligence set forth above in the First and Second

Causes for Discipline is also a negligent act.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Medical Records)

34. Respondent is subject to disciplinary action under Code section 2266 in that Respondent failed to maintain adequate and accurate records related to the provision of medical services to a patient. The circumstances are as follows:

35. The allegations of the First, Second and Third Causes for Discipline, inclusive, are incorporated herein by reference as if fully set forth.

36. In addition, Respondent failed to adequately document his medical care for the patients alleged herein, including without limitation, Patients A and C.

FIFTH CAUSE FOR DISCIPLINE

(Violation of Drug Laws)

37. Respondent is subject to disciplinary action under Code section 2238 and Title 21 of the Code of Federal Regulations (CFR) sections 1306.03 and 1306.05, subdivision (a), in that he violated a drug statue and/or regulation. The circumstances are as follows:

38. Respondent violated applicable federal drug laws that required that the only individuals who are entitled to issue prescriptions are individual practitioners who are (1) authorized to prescribe controlled substances by the jurisdiction in which he or she are licensed to practice his or her profession, and (2) either registered or exempted from registration pursuant to Secs. 1301.22(c) and 1301.23 of Title 21 of the CFR. However, Respondent's unlicensed medical assistants whom he authorized to issue his pre-signed prescriptions failed to meet the above requirements.

39. Respondent signed blank prescription scripts that were not dated as of, and signed on, the day when issued and failed to bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, and directions for use.

40. The allegations of the First, Second, Third and Fourth Causes for Discipline and in the First Cause for Probation Revocation below, are incorporated herein by reference as if fully set forth.

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty and/or Corruption)

41. Respondent is subject to disciplinary action under Code section 2234, subdivision (e) in that his actions and/or omissions in this matter represent dishonest and/or corrupt acts. The circumstances are as follows:

42. The allegations of the First, Second, Third, Fourth and Fifth Causes for Discipline and in the First Cause for Probation Revocation below, are incorporated herein by reference as if fully set forth.

SEVENTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

43. Respondent is subject to disciplinary action under Code section 2234, in that his actions and/or omissions represent unprofessional conduct, generally. The circumstances are as follows:

44. The allegations of the First, Second, Third, Fourth, Fifth and Sixth Causes for Discipline and in the First Cause for Probation Revocation below, are incorporated herein by reference as if fully set forth.

PETITION TO REVOKE PROBATION

45. In a disciplinary action entitled, *In the Matter of the Accusation Against Donald Woo Lee, M.D.*, Case No. 09-2010-205998, the Board issued a decision, effective November 2, 2012, which placed Respondent's Physician's and Surgeon's Certificate on probation for six (6) years with terms and conditions. A copy of the Board's Decision and Order in Case No. 09-2010-205998 is attached as Exhibit A and incorporated herein by reference as if fully set forth. Respondent is in violation of the terms and conditions of the disciplinary order in Case No. 09-2010-205998 as set forth below.

FIRST CAUSE FOR PROBATION REVOCATION

(Obey All Laws)

46. Term and condition number 6 of the disciplinary order states:

"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."

47. Respondent has violated term and condition number 6 by violating the Medical Practice Act. The circumstances are as follows:

48. The allegations of the First, Second, Third, Fourth, Fifth and Sixth Causes for Discipline are incorporated herein by reference as if fully set forth.

49. Respondent has violated term and condition number 6 by violating a federal condition of bail. The circumstances are as follows:

50. On or about June 16, 2016, in the matter entitled, *United States of America v. Donald Woo Lee*, case no. CR16-0415, the federal government filed an Indictment against Respondent, which alleged, among other things, Medicare fraud. On or about June 21, 2016, Respondent acknowledged by his signature, his conditions for his pre-trial release order, including a condition that he "shall not be employed where he will be involved in billing Medicare, Medicaid, Medi-Cal or other public benefit program." However, during the year of 2018, Respondent saw patients which resulted in bills to the Medicare, Medicaid, Medi-Cal or other public benefit program, in violation of the above court order.

DISCIPLINARY CONSIDERATIONS

51. As set forth above, Respondent's Physician's and Surgeon's Certificate was placed on probation (which remains in effect) for six (6) years with terms and conditions, in a decision, effective November 2, 2012, in Case No. 09-2010-205998. Respondent was disciplined in that case in connection with, inter alia, allegations of forgery and billing fraud.

52. In a disciplinary action entitled, *In the Matter of the Accusation Against Donald Woo Lee, M.D.*, Case No. 17-2007-183005, the Board issued a Decision, effective December 7, 2012, in which Respondent's Physician and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of three (3) years with certain terms and conditions. Respondent was disciplined for, inter alia, altering the medical records of a patient with fraudulent intent.

///

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 the probation that was granted by the Board in Case No. 09-2010-205998 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate Number A56294 issued to Donald Woo Lee, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate Number A56294, issued to Donald Woo Lee, M.D.;

3. Revoking, suspending or denying approval of Donald Woo Lee, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and ordering him not to supervise advanced practice nurses;

4. Ordering Donald Woo Lee, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: September 25, 2019

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

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Exhibit A
Medical Board of California Decision and Order in Case No. 09-2010-205998

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

In the Matter of the Accusation Against:	)	
DONALD WOO LEE, M.D.	)	Case No. 09-2010-205998
Physician's and Surgeon's Certificate No. A-56294	)	
Respondent	)	

DECISION

The attached Stipulation 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 2, 2012.

IT IS SO ORDERED: October 3, 2012.

MEDICAL BOARD OF CALIFORNIA

Barbara Yaroslavsky, Chair
Panel A

KAMALA D. HARRIS
Attorney General of California
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Supervising Deputy Attorney General
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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: **DONALD WOO LEE, M.D.** **33203 Wolfe Street** **Temecula, CA 92592** **Physician's and Surgeon's Certificate No. A 56294** Respondent.	Case No. 09-2010-205998 OAH No. 2011120070 **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. Linda K. Whitney ("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 Kamala D. Harris, Attorney General of the State of California, by Doug Knoll, Deputy Attorney General.

2. Respondent DONALD WOO LEE, M.D. ("Respondent") is represented in this proceeding by attorney Samuel G. Lockhart, whose address is: 41856 Ivy Street, Suite 207 Murrieta, CA 92562

3. On or about August 21, 1996, the Board issued Physician's and Surgeon's Certificate No. A 56294 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. 09-2010-205998 and will expire on August 31, 2014, unless renewed.

JURISDICTION

4. Accusation No. 09-2010-205998 was filed before the Board onOctober 13, 2011, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 13, 2011. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 09-2010-205998 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. 09-2010-205998. 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 Accusation; the right to be represented by counsel at his own expense; 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. In the interest of resolving the Accusation without the expense and uncertainty of further proceedings, 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. 09-2010-205998, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

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 probationary terms 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 facsimile or electronic mail copies of this Stipulated Settlement and Disciplinary Order, including facsimile or electronic mail 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 56294 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for six (6) years on the following terms and conditions.

1. COMMUNITY SERVICE - FREE SERVICES. Within sixty (60) calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval a community service plan in which Respondent shall provide five hindred (500) hours of free services (e.g., medical or nonmedical) to a community or non-profit organization.

Respondent shall complete a minimum of one hundred (100) hours of his community service in each successive twelve (12) month period following the effective date of this Decision. Respondent understands and agrees that he will not petition the Board for any modification of his probation unless, and until, he has completed his entire five hundred (500) hour community service requirement. Any such petition brought to hearing prior to completion of Respondent's entire community service requirement shall be null and void.

Prior to engaging in any community service hereunder, Respondent shall provide a true copy of this Decision to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where Respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service.

Community service performed prior to the effective date of this Decision shall not be accepted in fulfillment of this condition.

2. PROFESSIONALISM PROGRAM (ETHICS COURSE. Within sixty (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. 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 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 fifteen (15) calendar days after successfully completing the program or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

3. BILLING MONITOR. Within thirty (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a billing 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 this Decision, Accusation No. 09-2010-205998, and a proposed monitoring plan. Within fifteen (15) calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, 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 sixty (60) calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's billing 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 sixty (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 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 medical billing, and whether Respondent is billing appropriately. 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 ten (10) calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within five (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 fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (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.

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. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is prohibited from supervising physician assistants.

6. 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.

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 and all terms and conditions of this Decision.

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(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 thirty (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 fifteen (15) calendar days of any periods of non-practice lasting more thanthirty (30) calendar days and within fifteen (15) calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California 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. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. 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 eighteen (18) calendar months, Respondent shall successfully complete a clinical training 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 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; and General Probation Requirements.

11. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., probation costs) not later than one hundred and twenty120 calendar days prior to the completion of probation. 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, Petition to Revoke Probation, or Petition for 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.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Samuel G. Lockhart. 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: 9/5/12

DONALD WOO LEE, M.D., Respondent

I have read and fully discussed with Respondent DONALD WOO LEE, 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: 9/5/12

Samuel G. Lockhart, Attorney for Respondent

ENDORSEMENT

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

Dated: 9/5/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GLORIA L. CASTRO
Supervising Deputy Attorney General

DOUG KNOLL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 09-2010-205998

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO October 13 2011
BY: _____ ANALYST

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

In the Matter of the Accusation Against: **DONALD WOO LEE, M.D.** **41601 Laurel Valley Circle** **Temecula, CA 92591** **Physician's and Surgeon's Certificate No. A 56294** Respondent.	Case No. 09-2010-205998 ACCUSATION

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about August 21, 1996, the Medical Board of California ("Board") issued Physician's and Surgeon's Certificate Number A 56294 to DONALD WOO LEE, M.D. (Respondent)[1]. 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 August 31, 2012, unless renewed.

[1] As used in this Accusation, "Respondent," depending upon the context, may also refer to Respondent's practice, Prime Partners Medical Group, Inc., of which Respondent, at all times relevant herein, was the President, CEO and sole shareholder.

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 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 Division[2] deems proper.

5 Section 2234 of the Code states, *inter alia*:

"The Division of Medical Quality 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 [Chapter 5, the Medical Practice Act].

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

A. Law Applicable to Unlawful Use of, and Fraudulent Alteration of, Another's Fluoroscopy Permit.

6. California Code of Regulations ("CCR"), Title 17, section 30462 states:

"A radiology supervisor and operator certificate issued by the Department [of Public Health] shall be required of any licentiate of the healing arts who practices as a radiologist."

7. Section 119 of the Code states, *inter alia*:

"Any person who does any of the following is guilty of a misdemeanor:

"(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

[2] "Division of Medical Quality" or "Division" shall be deemed to refer to the Medical Board of California. (Bus. & Prof. Code, section 2002.)

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

"(c) Displays or represents any license not issued to him or her as being his or her license.

"(d) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

"(g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forges, or counterfeited. For purposed of this subdivision, "fraudulent" means containing any misrepresentation of fact.

"As used in this section, "license" includes "certificate," "permit"" "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600." (Emphasis added.)

8. Section 581 of the Code states, *inter alia*:

"No person...shall purchase or procure...by any unlawful means or method, or have in possession any diploma, certificate, transcript or any other writing with intent that it shall be used as evidence of the holder's qualifications to practice as a physician and surgeon...or to practice as any other licentiate under this division or in any fraud of the law regulating this practice, or, shall with fraudulent intent, alter in material regard any such diploma, certificate, transcript, or any other writing."

9. Section 2052 of the Code states:

"(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being

authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment."

10. Section 2261 of the Code states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

B. Law Applicable to Unlawful Use of X-ray (DEXA).

11. Section 107110 of the Health and Safety Code states, *inter alia*:

"It shall be unlawful for any licentiate of the healing arts to administer or use diagnostic...or therapeutic X-ray on human beings in this state after January 1, 1972, unless that person is certified pursuant to subdivision (e) of Section 114870...and is acting within the scope of that certification."

12. Section 114870 of the Health and Safety Code states, *inter alia*:

"The [Department of Public Health] shall do all of the following:

"(e) Provide, upon recommendation of the committee, for certification of licentiates of the healing arts to supervise the operation of X-ray machines or to operate X-ray machines, or both, prescribe minimum standards of training and experience for these licentiates of the healing arts, and prescribe procedures for examining applicants for certification."

13. Section 106965 of the Health and Safety Code states, *inter alia*:

"(a) It shall be unlawful for any person to administer or use diagnostic or therapeutic X-ray on human beings in this state after July 1, 1971, unless that person has been certified or granted a permit pursuant to subdivision (b) ["Radiologic Technologist"] or (c) ["Limited Permit X-ray Technician"] of Section 114870 or pursuant to Section 114885, is acting within the scope of that certification or permit, and is acting under the supervision of a licentiate of the healing arts."

14. Section 106980 of the Health and Safety Code states, *inter alia*:

"Certification in radiologic technology pursuant to subdivision (b) or (c) of Section 114870 shall not authorize any of the following:

"(a) The use of diagnostic, mammographic, or therapeutic X-ray equipment except under the supervision of a certified supervisor or operator."

15. Section 114850 of the Health and Safety Code states, *inter alia*:

"As used in this chapter [Chapter 6: "Radiologic Technology"]:

"(g) 'Supervision' means responsibility for, and control of, quality, radiation safety, and technical aspects of all X-ray examinations and procedures."

16. Section 107075 of the Health and Safety Code states:

"Any person who violates or aids or abets the violation of any of the provisions of the Radiologic Technology Act (Section 27)[3] or regulation of the [Department of Public health] adopted pursuant to that act is guilty of a misdemeanor."

C. Law Applicable to Submission of False Insurance Claims.

17. Section 810 of the Code states, *inter alia*:

"(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

"(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

"(2) Knowingly prepare, make or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

"(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code."

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[3] Health and Safety Code, section 27, provides that the *Radiologic Technology Act* is comprised of sections 106965 through 107120, and Chapter 6 of Part 9 of Division 104 (sections 114840, et seq.)

18. Section 550 of the Penal Code states, *inter alia*:

"(a) It is unlawful to do any of the following or to aid, abet, solicit or conspire with any person to do any of the following:

"(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under a contract of insurance.

"(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.

"(7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.".

19. Section 1871 of the Insurance Code states, *inter alia*:.

"The Legislature finds and declares as follows:

"(h) Health insurance fraud is a particular problem for health insurance policyholders. Although there are no precise figures, it is believed that fraudulent activities account for billions of dollars annually in added health care costs nationally. Health care fraud causes losses in premium dollars and increases health care costs unnecessarily."

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FACTS RE:UNLAWFUL USE OF X-RAY (DEXA AND FLUOROSCOPY PERMIT, AND FRAUDULENT CREATION AND ALTERATION OF DOCUMENTS INCLUDING A FLUOROSCOPY PERMIT.

20. Respondent specializes in internal medicine.

21. At all times relevant, Respondent was the President, CEO, and sole owner of Prime Partners Medical Group, Inc., located at 31720 Temecula Parkway (a.k.a. Highway 79 South), Suite 200, Temecula, California 92592.

22. At all times relevant, Respondent was also the founder, owner, and Medical Director of Prime Partners IPA[4], which was located in the same office suite as Prime Partners Medical Group, Inc.

[4] "IPA" stands for Independent Physician Association, a group of physicians that contracts with Health Maintenance Organizations ("HMOs") to provide medical services to member (continued...)

23. Prime Partners IPA contracted with Prime Partners Medical Group. Inc. to provide internal medicine services to the member patients of the HMOs with which Prime Partners IPA contracted.

24. In 2006, Respondent purchased, Prime Partners Medical Group, Inc., a DEXA[5] machine, in order to be able to perform X-ray bone densitometry scans in his office.

25. Respondent was not a Certified Supervisor or Operator, as defined in Health and Safety Code section 114850, subdivision (i), i.e. he was not certified, pursuant to Health and Safety Code section 114870, subdivision (e), to operate the DEXA machine or to supervise the operation of the DEXA machine. As such, he was aware that it was unlawful for him to operate the DEXA machine.

26. Two of Respondent's employees, Gina Bae and Cindy Estacio, each obtained, from the Radiologic Health Branch of the Department of Public Health ("DPH"), a "Limited Permit in X-ray Technology," authorizing them to perform procedures in "X-ray Bone Densitometry," and to use the title, "X-ray Technician." Said Limited Permits, as defined in Health and Safety Code section 114850, subdivision (g), were issued pursuant to Health and Safety Code section 115870, subdivision (c), authorizing issuance of "limited radiologic technology permits" to persons who qualify to become a "limited permit X-ray technician."

27. Respondent was aware that, pursuant to Health & Safety Code section 10695, subdivision (a), and section 10690, subdivision (a), it was unlawful for his X-ray Technicians to perform DEXA bone scans without supervision by a Certified Supervisor or Operator who had been issued such certification by the Radiologic Health Branch of the DPH. However, as noted above, Respondent was not so certified.

28. In January, 2006, Respondent approached his colleague, Allen K. Chan, M.D. ("Dr. Chan"), a vascular surgeon, and asked if Dr. Chan would be willing to loan Respondent his Fluoroscopy X-ray Supervisor and Operator Permit No. RHC 160940 ("Fluoroscopy Permit"), in

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patients of the HMOs.

[5] "DEXA" is an acronym for "Dual Energy X-ray Absorptiometry." DEXA scans measure bone mineral density using two X-ray beams with differing energy levels.

return for payment of the sum of One Thousand Dollars ($1,000.00). Dr. Chan agreed, accepted the payment, and provided Respondent with a copy of his Fluoroscopy Permit. Dr. Chan's Fluoroscopy Permit had an expiration date of February 28, 2007.

29. Respondent wrote, on a blank piece of paper, a purported handwritten "agreement," dated "1/06," which stated, "*I Alan* [sic] *Chan agree to be supervisor of DEXA for Prime Partners Medical Group. Dr. Alan* [sic] *Chan has right to quit anytime if he wished to do* [sic]." The document ("Agreement") was signed by Respondent and Dr. Chan.

30. Pursuant to section 30462 of Title 17 of the CCR, Dr. Chan's Fluoroscopy Permit did not authorize him to perform, or supervise, DEXA bone densitometry scans.

31. Moreover, the Radiologic Health Branch of the DPH requires that facilities utilizing the services of an *off-site* supervisor of X-ray services: (a) enter into a written agreement for said supervisory services, (b) possess a written "X-ray Policy and Procedure Manual" approved by the off-site supervisor, and (c) visit the site, on at least a quarterly basis, to observe the X-ray procedures, and to inspect and review specified matters.

32. At the time of the Agreement, Dr. Chan had not been trained in the operation of, or supervision of the operation of, DEXA bone densitometry scanning machines. Nor did he have any experience in the operation of, or the supervision of the operation of, DEXA bone densitometry scanning machines. After signing the Agreement and accepting the $1,000.00 payment, Dr. Chan never actually supervised a single DEXA scan in Respondent's office, nor did he perform any of the other duties of an off-site supervisor. Nevertheless, Respondent: (a) displayed Dr. Chan's Fluoroscopy Permit in his office, falsely representing that Dr. Chan was, in fact, serving as the off-site supervisor of the DEXA scans performed by Respondent's X-ray Technicians, and (b) sent the Fluoroscopy Permit to KMS Strategic Services, a.k.a Hemet Community Medical Group ("Hemet"), which was the management company for Prime Partners IPA. Hemet was responsible for drafting Prime Partners IPA's contracts and for the credentialing of physicians who contracted with Prime Partners IPA. By sending the Fluoroscopy Permit to Hemet, Respondent falsely represented that his practice, Prime Partners Medical Group, which

was under contract to Prime Partners IPA, had a proper Supervisor/Medical Director in place to supervise the DEXA scans Respondent was conducting.

33. On August 6, 2007, Respondent was contacted by Sophia Chang at Hemet, and was asked to provide a copy of Respondent's radiology license for credentialing purposes. That same day, Respondent sent a letter to Hemet, enclosing a copy of Dr. Chan's then-expired Fluoroscopy Permit and stating, *inter alia*, "*Attached is a copy of the supervising physicians certificate (Dr. Allen Chan) for the Bone Density machine which is being operated in my office. A contract is in place with Dr. Chan who has agreed to be the supervising physician pending the completion of my passing the state supervisor test which is currently in the process. Please note that the certificate is expired but the updated one will be faxed to you as soon as I receive it.*"

34. Shortly thereafter, Respondent, with the assistance of employee Cindy Estacio, altered Dr. Chan's Fluoroscopy Permit, to make it appear that the permit was issued in Respondent's name and was current through February 28, 2009. He asked employee Tanya Uribe to fax the altered permit to Hemet, but she refused. Respondent tore the altered permit in half and threw it at Ms. Uribe.

35. Approximately one week later, Respondent asked Ms. Uribe to sign an affidavit that Respondent had prepared, purporting to have her state that Respondent did not alter Dr. Chan's Fluoroscopy Permit. Ms. Uribe refused. Ms Uribe resigned from her employment with Prime Partners Medical Group in November, 2007.

36. While employed by Respondent, between January, 2006 and November, 2007, Ms. Uribe witnessed Respondent performing DEXA scans himself on numerous occasions.

37. On February 23, 2011, in an interview with Board Investigator Jennifer Doll and others, Respondent falsely claimed that:

(a) Respondent never operated the DEXA machine himself;

(b) Dr. Chan's Fluoroscopy Permit qualified him to act as the Supervisor/Medical Director, supervising Respondent's use of the DEXA scans;

(c) From January, 2006 through approximately July of 2008, when he "resigned," Dr. Chan acted as the Supervisor/Medical Director of Respondent's practice;

(d) There is no legal requirement that a designated supervisor of DEXA scans must actually ever show up and be present to supervise the operation of the machine by the X-ray Technicians;

(e) Respondent did not pay Dr. Chan the $1,000.00 in 2006 at the time he borrowed Dr. Chan's Fluoroscopy Permit and wrote the Agreement; instead, he paid him the $1,000.00 in 2007 after learning that that the Fluoroscopy Permit Dr. Chan provided Respondent in 2006, at the time of the Agreement, had expired on February 28, 2007;

(f) The $1,000.00 payment was partly to get a copy of Dr. Chan's then-current Fluoroscopy Permit, partly in return for Dr. Chan's continued service as Supervisor/Medical Director, and partly "out of appreciation of what he's been [sic] done for us";

(g) Dr. Chan's Fluoroscopy Permit was not altered by Respondent, nor was it altered at his direction; instead, his employee, Cindy Estacio, made a copy of the document, replacing Dr. Chan's name with Respondent's name, for the sole purpose of showing Respondent what his own permit would look like if he obtained one, i.e., showing him that "this would be yours if you ever, you know, get it certified on this and don't have to hassle with it"; and

(h) Respondent believes that Dr. Festus Dada, with whom he was having business disputes, altered Dr. Chan's Fluoroscopy Permit and submitted it to Hemet "to try to got [sic] me in trouble in some directions."

FACTS RE SUBMISSION OF FALSE INSURANCE CLAIMS

A. Claims for Interpretation of DEXA Scan Results.

38. Patients GG, WP, BA and YD[6] were referred to Respondent, by their own treating physicians, for DEXA bone densitometry scans. Upon such referrals, Respondent had his X-ray technicians perform the scan and forward the written report of the scan results to the respective patients' physicians for interpretation.

[6] To protect their privacy, all patients referenced in this Accusation will be identified by their initials.

39. Despite the fact that Respondent did not provide any interpretation of the bone scan results for patients GG, WP, BA or YD, Respondent knowingly, and falsely, billed said patients respective health insurance providers and/or Medicare for interpretation of the bone scans.

B. Claims for Surgical Vein Procedures Not Performed.

40. In 2005 and 2006, Respondent performed non-surgical vein removal procedures in his office, with a machine identified as a Cutera XEO, which utilized a laser beam. With the patient under a local anesthesia applied to the surface of the skin, the procedure involves applying the laser beam to the surface of the skin, heating the vein until the vein collapses.

41. In 2005 and 2006, Respondent performed non-surgical laser vein removal procedures on over twenty (20) patients. For each of these procedures, Respondent, through his billing contractor, Pinnacle Billing Service[7], fraudulently billed Medicare and/or each patient's health insurance provider three thousand dollars ($3,000.00), for a total in excess of sixty-thousand dollars ($60,000.00) utilizing the erroneous CPT Codes[8] "36478" and "36479."[9]

42. As a result of Respondent's fraudulent billing practices, as described in paragraph 40, he wrongfully received in excess of thirty-five thousand dollars ($35,000.00) in reimbursements.

43. Upon reviewing an insurance company check, payable to Respondent, for an amount that appeared excessive, Respondent's employee, Tanya Uribe, researched the CPT Code utilized by Respondent and determined that it was for a surgical vein procedure not performed by Respondent. She printed out a description of the procedure and showed it to Respondent, who looked at the printout and promptly threw it in the trash, without explanation.

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[7] Complainant does not allege that Pinnacle Billing Service had any knowledge of Respondent's fraudulent billing practices until July of 2008, when Pinnacle brought it to Respondent's attention and terminated its contract with Respondent.

[8] "CPT" stands for "Current Procedural Terminology." These codes, developed by the American Medical Association, describe every type of service a healthcare provider may provide to a patient. They are used to make a list of those services, then to submit to insurance or Medicare or another payer for reimbursement purposes.

[9] CPT Codes 36478 and 36479 refer to surgical vein removal procedures which require entry through the skin into the vein, and use ultrasound to monitor the vein collapse. CPT Code 36478 refers to the "first vein treated" on a particular patient. CPT Code 36479 refers to the "second and subsequent veins treated in a single extremity" on that patient. These codes were readily available to Respondent on the American Medical Association's website. Respondent is not a vascular surgeon, and has never performed these procedures.

44. In an interview with a Board investigator and others, on February 23, 2011, Respondent falsely claimed that he was unaware of the erroneous billings until he was informed, in July of 2008, of same by Pinnacle Billing Service. (*See paragraph 45, below.*)

45. On July 10, 2008, Pinnacle Billing Service informed Respondent that it had discovered Respondent's wrongful use of the 36478 and 36479 CPT Codes and was, therefore, exercising its contractual right to terminate its contract with Respondent, citing Respondent's "improper and perhaps illegal conduct."

46. Despite actual knowledge, no later than July of 2008, that he had received substantial payments for a surgical vein removal procedure he never performed, Respondent did not advise the affected patients, or Medicare, of the "billing error" until July of 2010. As of this date, no portion of those payments has been returned by Respondent.

FIRST CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

47. Respondent is subject to disciplinary action under section 2234 of the Code in that he engaged in multiple acts of general unprofessional conduct. The circumstances are set forth in paragraphs 20 through 46, which are incorporated by reference herein.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of "Medical Practice Act")

48. Respondent is subject to disciplinary action under section 2234, subdivision (a), of the Code in that he has violated the "Medical Practice Act," to wit:

(a) Code section 2052, by performing DEXA bone densitometry scans without proper certification and authorization, a public offense; and

(b) Code section 2261, by: (i) creating documents which fraudulently represented that Dr. Chan was acting as Respondent's off-site supervisor of Respondent's DEXA bone densitometry scans, and (ii) fraudulently altering Dr. Chan's expired Fluoroscopy Permit to make it appear that the permit had been issued in Respondent's name and was current.

The circumstances are set forth in paragraphs 20 through 36, which are incorporated by reference herein.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonesty- Fraudulent Use of Another's Radiology Certificate)

49. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that he engaged in dishonest acts, to wit: the fraudulent use of another physician's Radiology Certificate. The circumstances are set forth in paragraphs 20 through 33, which are incorporated by reference herein.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonesty- Fraudulent Creation of Documents)

50. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that he engaged in dishonest acts, to wit: the fraudulent creation of a purported agreement, and subsequent correspondence, falsely representing that Dr. Chan was acting as Respondent's off-site supervisor of Respondent's DEXA bone densitometry scans.. The circumstances are set forth in paragraphs 20 through 33, which are incorporated by reference herein.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonesty- Fraudulent Alteration of Another's Radiology Certificate)

51. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that he engaged in dishonest acts, to wit: the fraudulent alteration of another physician's Fluoroscopy Certificate. The circumstances are set forth in paragraphs 20 through 35, which are incorporated by reference herein.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonesty)

(Submission of False Claims for Interpretation of DEXA Scans)

52. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that he engaged in dishonest acts, to wit: the submission of false claims for interpretation of DEXA scans. The circumstances are set forth in paragraphs 38 and 39, which are incorporated by reference herein.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonesty)

(Submission of False Claims for Surgical Vein Procedures)

53. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that he engaged in dishonest acts, to wit: the submission of false claims for surgical vein procedures which Respondent did not perform. The circumstances are set forth in paragraphs 40 through 46, which are incorporated by reference herein.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonesty- Lying to Board re Use of DEXA Scans)

54. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that he engaged in dishonest acts, to wit: Respondent, on February 23, 2011, lied to the Board re:

(i) His performing DEXA bone densitometry scans without proper certification and authorization;

(ii) His fraudulent creation of a purported agreement and subsequent correspondence fraudulently representing that Dr. Chan was acting as Respondent's off-site supervisor of Respondent's DEXA bone densitometry scans;

(iii) His unlawful use of Dr. Chan's Fluoroscopy Permit; and

(iv) His fraudulent alteration of Dr. Chan's Flouroscopy Permit

The circumstances are set forth in paragraphs 20 through 37, which are incorporated by reference herein.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonesty)

(Lying to Board re Submission of False Claims for Surgical Vein Procedures)

55. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that he engaged in dishonest acts, to wit: he lied to the Board on February 23, 2011 re his knowledge, prior to July, 2008, that he submitted erroneous billings for surgical vein

procedures which Respondent did not perform. The circumstances are set forth in paragraphs 40 through 45, which are incorporated by reference herein.

DISCIPLINARY CONSIDERATIONS

56. In a disciplinary action entitled "*In the Matter of Accusation Against Donald Woo Lee, M.D.*," Case No. 17-2007-183005, the Board issued a Decision, effective May 11, 2011, in which Respondent's Physician and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five (5) years with certain terms and conditions. Respondent was disciplined for, *inter alia*: altering the medical records of patient L.W. with fraudulent intent.

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 and Surgeon's Certificate Number A 56294, issued to Respondent;

2. Revoking, suspending or denying approval of Respondent's authority to supervise physician's assistants, pursuant to section 3527 of the Code;

3. If placed on probation, ordering Respondent to pay the costs of probation monitoring; and

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

DATED: October 13, 2011

LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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