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

In the Matter of the Accusation Against:	)	
Ho Dzung Anh, M.D., M.D.	)	**Case No. 800-2016-026858**
Physician's and Surgeon's Certificate No. A136301	)	
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 April 22, 2020.

IT IS SO ORDERED March 23, 2020.

MEDICAL BOARD OF CALIFORNIA

By: Ronald H Lewis, MD

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

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
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: **HO DZUNG ANH, M.D.** **22 Bannock Street, Apt A** **San Francisco, CA 94112** **Physician's and Surgeon's Certificate No. A 136301** Respondent.	Case No. 800-2016-026858 OAH No. 2019120796 **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. Christine J. Lally (Complainant) is the Interim 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 Lawrence Mercer, Deputy Attorney General.

2. Respondent Ho Dzung Anh, M.D. (Respondent) is represented in this proceeding by attorneys Stephen M. Boreman and Adam G. Slote and Slote, Links & Boreman, One Embarcadero Center, Suite 400, San Francisco, CA 94111.

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3. On or about May 22, 2015, the Board issued Physician's and Surgeon's Certificate No. A 136301 to Ho Dzung Anh, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-026858, and will expire on March 31, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-026858 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 11, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-026858 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-026858. 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 confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2016-026858, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

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10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

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

CONTINGENCY

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

13. 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.

14. 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

1. IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 136301 issued to Respondent Ho Dzung Anh, M.D., shall be and is hereby publicly reprimanded pursuant to Business and Professions Code §2227(a)(4). This Public Reprimand, which is issued

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in connection with Respondent's actions, as set forth in the Accusation, is as follows:

> On February 1, 2017 and February 28, 2017, using a telemedicine protocol, you diagnosed infections and prescribed antibiotic prescriptions to two undercover investigators for infections that they did not in fact have. Your care and treatment was provided without obtaining a reliable history, performing a physical examination or otherwise verifying that there was a medical indication for the prescriptions.

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

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

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

Respondent agrees that failure to enroll in and/or successfully complete the course shall constitute unprofessional conduct and grounds for further discipline.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney. 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: 03 / 03 / 2020

Ho Anh

HO DZUNG ANH, M.D.
Respondent

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

SLOTE, LINKS & BOREMAN

DATED: 03 / 03 / 2020

Adam Slote

ADAM G. SLOTE
Attorney for Respondent

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ENDORSEMENT

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

DATED: March 4, 2020

Respectfully submitted,

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

LAWRENCE MERCER
Deputy Attorney General
Attorneys for Complainant

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 11 2018
BY: ANALYST

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

In the Matter of the Accusation Against: **Ho Dzung Anh, M.D.** 22 Bannock Street, Apt. A San Francisco, CA 94112 Physician's and Surgeon's Certificate No. A 136301, Respondent.	Case No. 800-2016-026858 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California.

2. On or about May 22, 2015, the Medical Board issued Physician's and Surgeon's Certificate Number A 136301 to Ho Dzung Anh, 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 March 31, 2019, unless renewed.

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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 unless otherwise indicated.

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(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.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

5. 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.

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6. 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. . ."

7. Section 2242 of the Code states, in pertinent part:

"Prescribing, dispensing, or furnishing dangerous drugs as defined by section 4022 without an appropriate prior examination and medical indication, constitutes unprofessional conduct."

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8. Section 2290.5 of the Code states:

A(a) For purposes of this division, the following definitions shall apply:

"(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

"(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

"(3) "Health care provider" means a person who is licensed under this division.

"(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

"(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

"(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

"(b) Prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

"(c) Nothing in this section shall preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

"(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

"(e) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

"(f) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

"(g) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

"(h) (1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

"(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

"(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations."

9. 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."

10. Since the enactment of Section 2290.5 of the Code, the Board has issued informal guidelines to assist physicians in providing telehealth services that comply with the standard of care:

A. "[Section 2290.5(e)] [s]tates that this section shall not be construed to alter the scope of practice of any healthcare provider." (www.mbc.ca.gov/Licensees/Telehealth.aspx)

B. "By law, with very limited exceptions, prescription drugs must be prescribed by a physician after a good faith examination has been performed and a medical indication for the prescription has been determined." (www.mbc.ca.gov/Consumers/Internet_Prescribing.aspx)

C. "Telehealth is not a telephone conversation, email/instant messaging conversation, or fax; it typically involves the application of videoconferencing or store and forward technology to provide or support health care delivery."

"The **standard of care** is the same whether the patient is seen in-person, through telehealth or other methods of electronically enabled health care." [emphasis in original] (www.mbc.ca.gov/Licensees/Telehealth.aspx)

D. "Under California law, a physician cannot prescribe medications (or recommend marijuana for medical purposes) without an appropriate prior examination and indications justifying the patient's use of the drug. The Board has stated that this examination need not be in person, if the technology is sufficient to provide the same information to the physician as would be obtained if the examination had been performed face-to-face. A simple questionnaire without an appropriate prior evaluation may be a California practice violation." (Medical Board of California Newsletter (Fall 2015), pp. 9-10)

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts)

("Mary Peters")

11. Respondent Ho Dzung Anh, M.D. is subject to disciplinary action under section 2234 and/or 2234(b) and/or 2234(c) and/or 2242 and/or 2290.5 in that respondent diagnosed, treated and prescribed for a patient without a prior examination and/or medical indication. The circumstances are as follows:

12. At all relevant times, respondent was a physician providing medical care and advice to California consumers via the website Lemonaidhealth.com.

13. In 2016, the Board received information that patients might be obtaining prescriptions from a company operating under the name Lemonaidhealth.com. On October 10, 2016, the website for Lemonaidhealth.com advertised a "refreshingly simple" method to obtain a doctor's prescription for multiple medical conditions, including urinary tract infections and sinusitis.

14. On February 1, 2017, an investigator for the Health Quality Investigation Unit created an online account with Lemonaidhealth.com using the alias "Mary Peters" and a fictitious street address. She reviewed an information sheet, including a list of 11 conditions, which the site advised would render it in the patient's "best interest" to see a physician in person rather than use the site. The investigator then filled out a 7-page questionnaire online. The questionnaire outlined the conditions the patient must endorse to qualify for an antibiotic prescription, as well as those the patient would have to deny in order to qualify for an antibiotic prescription. The investigator endorsed and denied the conditions necessary to obtain an antibiotic prescription. In fact, the investigator did not have a urinary tract infection or symptoms indicative of a urinary tract infection. After completing the questionnaire, the investigator then submitted the online

questionnaire with a headshot of herself and designated a pharmacy where the prescription should be filled.

15. In providing information regarding her condition, the investigator was not asked to provide vital signs and there was no technology available on the website to test and record vital signs. Neither a synchronous nor an asynchronous physical examination was performed and no alternative technology to obtain the same information was utilized. Medical records from the investigator's other healthcare providers were neither requested nor reviewed. Diagnostic tests were not ordered. As a consequence, the veracity, accuracy and reliability of information provided by the investigator could not be objectively verified by respondent and he had insufficient information to diagnose the patient or recommend treatment.

16. Within a half hour after the investigator submitted her information, respondent sent her an email response stating that he had reviewed all of the information provided and determined that she likely had a simple urinary tract infection that could be treated with an antibiotic. He stated that he had sent a prescription to the pharmacy she had designated and he appended a treatment plan for treatment of her urinary tract infection with an antibiotic. The treatment prescribed was Macrobid, 100 mg, BID for seven days. Three days later, on February 4, respondent sent an email asking whether the patient had been able to pick up the medication and if "everything is okay." She was also asked to contact him if she had been taking the medication for at least three days but had not improved.

17. Respondent's records for "Mary Peters" were obtained from respondent by the Medical Board. The records consist of eight pages, including the patient's questionnaire responses. Under "history" the record states only that respondent or his staff reviewed the patient's questionnaire. Under "exam" the record states "I have reviewed the photo or video

submitted." Respondent's assessment is that "there is sufficient clinical suspicion of an uncomplicated urinary tract infection" to warrant treatment.

18. Respondent is guilty of unprofessional conduct and respondent's certificate is subject to discipline pursuant to sections 2234 and/or 2234(b) and/or 2234(c) and/or 2242 and/or 2290.5(d) in that respondent undertook to provide medical care and advice and also prescribed drugs without obtaining a reliable history, performing a physical examination and/or determining a medical indication for prescription antibiotics.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts)

("Mark Peters")

19. Respondent Ho Dzung Anh, M.D. is subject to disciplinary action under section 2234 and/or 2234(b) and/or 2234(c) and/or 2242 and/or 2290.5 in that respondent diagnosed, treated and prescribed for a patient without a prior examination and/or medical indication. The circumstances are as follows:

20. Complainant incorporates Paragraphs 12 and 13, above, as though fully set out herein.

21. On February 28, 2017, an investigator for the Health Quality Investigation Unit created an online account with Lemonaidhealth.com using the alias "Mark Peters" and a street address that belonged to a UPS store in Sacramento. The investigator accessed information relating to sinusitis and completed a questionnaire. The investigator was provided with a choice of five possible scenarios and advised that, if he qualified for treatment of a bacterial sinus infection, at least one would apply. The investigator selected one. The investigator was also provided with a list of 15 conditions that would be best managed by a physician at an in-person evaluation and he denied that he had any of them. In fact, the investigator did not suffer from sinusitis. After

completing the questionnaire, the investigator submitted it online with a headshot of himself and designation of a pharmacy to fill the prescription.

22. No vital signs were requested or obtained for "Mark Peters." Prior medical records were not requested or reviewed and no history beyond that provided in response to the online questionnaire was recorded. Neither a synchronous nor an asynchronous physical examination was performed and no alternative technology to obtain the same information was utilized. No laboratory tests were ordered. In sum, there was insufficient verified and reliable information for respondent to make a medical determination that "Mark Peters" suffered from sinusitis or would benefit from treatment with an antibiotic.

23. Shortly after "Mark Peters" submitted his questionnaire, he received an electronic message from respondent. Respondent advised that "you likely have a bacterial sinus infection that is appropriate to treat with an antibiotic." Respondent advised that the prescription had been sent to the selected pharmacy and he appended a "treatment plan" with directions for the patient's 10-day course of Amoxicillin. Respondent advised that if the patient had not improved in three days, he should return to the "app" for another medication or seek an in-person consultation with another physician.

24. The Board obtained respondent's records for "Mark Peters." The 8 pages of records include a "history" that is limited to review of the investigator's questionnaire responses. The "exam" references only a review of the "photo or video submitted." Despite the scant, unverified information provided, the "assessment" states that sufficient clinical suspicion of an uncomplicated bacterial sinus infection existed to justify treatment with an antibiotic and that respondent had sent a prescription for Amoxicillin, 500 mg, #30, TID, to the pharmacy designated by the patient.

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THIRD CAUSE FOR DISCIPLINE

(Inadequate and Inaccurate Records)

(All Patients)

25. Respondent Ho Dzung Anh, M.D. is subject to disciplinary action under section 2266, in that respondent failed to keep adequate and accurate records of his medical treatment.

26. Respondent's medical records, as described above, lacked confirmation of patient identity, vital signs, history, physical examination and a diagnosis supported by objective findings.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 136301, issued to Ho Dzung Anh, M.D.;

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

3. Ordering Ho Dzung Anh, M.D., if placed on probation, to pay Board the costs of probation monitoring; and

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

DATED: April 11, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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