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

In the Matter of the Accusation Against: TED KOBASHIGAWA 7275 E. Southgate Drive, Ste. 107 Sacramento, CA 95823 Physician's and Surgeon's Certificate No. A-39352, Respondent.	File No. 02-96-63666 OAH No. N1998010433

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on July 31, 1998.

IT IS SO ORDERED July 1, 1998.

Division of Medical Quality
Medical Board of California

I. Lubell

IRA LUBELL, M.D.
Chairperson Panel A

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against: TED KOBASHIGAWA 7275 E. Southgate Drive, Ste. 107 Sacramento, CA 95823 Physician's and Surgeon's Certificate No. A-39352, Respondent.	File No. 02-96-63666 OAH No. N1998010433

PROPOSED DECISION

On May 4, 1998, in Sacramento, California, Muriel Evens, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Fred A. Slimp II , Deputy Attorney General, represented the complainant.

Respondent was not present or otherwise represented.

Evidence was received, the record was closed May 6, 1998 and the matter was submitted.

FINDINGS OF FACT

1. Respondent Ted Hajime Kobashigawa was served with the notice of hearing for the time, date and place at his last address of record. He did not appear for the hearing, which proceeded in his absence.

2. The Medical Board of California issued Physician's and Surgeon's Certificate No. A-39352 to respondent on November 29, 1982. That certificate expired February 28, 1998.

3. On or about October 24, 1994, respondent prescribed drugs for undercover agent 1 without a good faith medical examination or indication therefor. Respondent also charged Medi-Cal for pharmacologic management of the patient, an inaccurate code for any services he may have performed.

4. On or about January 17, 1995, respondent wrote prescriptions for agent 1 and agent 2, although agent 1 was not present at the office and respondent did no examination of agent 1or agent 2. Respondent also charged Medi-Cal for pharmacologic management of agent 1, a code that requires the physician to see and exam the patient.

5. On or about February 24, April 20 and June 14, 1995, respondent prescribed drugs for agents 1 and 2, even though agent 1 was not present at the office and respondent did no examination of agent 1or agent 2.on that date. Respondent also charged Medi-Cal for pharmacologic management of the patients, a code that requires the physician to see and exam the patient.

6. On or about March 30, 1995, respondent saw agent 1 at his office. He prescribed drugs for her and agent 2, even though agent 2 was not present at the office and respondent did no examination of agent 1or agent 2.on that date. Respondent also charged Medi-Cal for pharmacologic management of the patients, a code that requires the physician to see and exam the patient.

7. On or about July 20, 1995, respondent saw agents 1, 2 and 3 at one time, although it was not a group therapy session. He prescribed drugs for each of them. Respondent also charged Medi-Cal for pharmacologic management of agents 1 and 3, a code that requires the physician to see and exam the patient.

8. On or about August 29, 1995, agents 1, 2 and 3 went to respondent's office, but only saw him in the reception area long enough to say hello. He prescribed drugs for each of them. Respondent also charged Medi-Cal for pharmacologic management of each of the agents, a code that requires the physician to see and exam the patient.

9. On or about July 26, 1995, respondent prepared and mailed false and fraudulent reports in support of claims for Social Security SSI disability benefits for agents 1 and 2.

10. In none of the above office visits was the patient given a good faith medical examination. There was no medical indication for the drugs prescribed. Respondent's prescribing drugs without a good faith medical examination and medical indication for the drugs is grossly negligent.

11. Respondent's patient records for agents 1 and 2 are grossly inadequate and do not set forth information, such as medical history, allergies, physical and mental examination results, assessments, and other matters required in patient records. There were no medical records found for agent 3. Respondent's failure to keep adequate medical records is an extreme departure from the standard of care.

12. Respondent's conduct of creating false and fraudulent billing codes and billing Medi-Cal for services not performed constitutes dishonesty.

13. Respondent's conduct in issuing false, fraudulent and fictitious prescriptions without legitimate medical purpose constitutes violations of Health and Safety Code sections 11153 and 11157.

14. Respondent's conduct in issuing prescriptions without a good faith medical examination and medical indication therefor is unprofessional conduct.

15. Respondent's conduct of creating false and fraudulent billing codes and falsely and fraudulently billing Medi-Cal for services not performed constitutes the knowing making of a document related to the practice of medicine that falsely represents the existence of a state of facts and therefore also constitutes unprofessional conduct.

16. On or about July 10, 1997, respondent was convicted in the Sacramento Superior and Municipal Courts on his plea of guilty of violation of Welfare and Institutions Code section 14107, presenting a false and fraudulent claim for Medi-Cal payments. Respondent was sentenced to 120 days in jail, four years probation and was ordered to pay restitution of $1,000 and fines and fees. In addition, respondent was ordered to participate in diversion. Respondent's conviction is substantially related to the qualifications, functions or duties of a physician.

17. Complainant submitted cost declarations totaling $11,035.50, as follows:

Medical Board Investigative services, 1997, 7.75 hours	$ 868.00
Deputy Attorney General, 1997-98, 103.75 hours	10,167.50
Total	$11,035.50

This amount is reasonable, given the nature of the matter, the number of undercover operations and the number of allegations.

18. All allegations not addressed are deemed not proved.

DETERMINATION OF ISSUES

1. Grounds for discipline exist pursuant to Findings 3 through 14 for violation of Business and Professions Code sections 2234(b), 2234(c), 2234(d), 2234(e), 2238 and 2242.

2. Grounds for discipline exist pursuant to Findings 9 and 15 for violation of Business and Professions Code sections 2261 and 2262.

3. Grounds for discipline exist pursuant to Finding 16 for violation of Business and Professions Code section 2236(a).

4. Pursuant to Business and Professions Code section 125.3, the Board is entitled to recover $11,035.50 from respondent.

ORDER

Physician's and Surgeon's Certificate No. A-39352 issued to respondent Ted Hajime Kobashigawa, M.D. is revoked.

Respondent is to pay costs of $11,035.50 to the Medical Board of California.

Dated: June 5, 1998

MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings

REDACTED

DANIEL E. LUNGREN, Attorney General
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 6 19 98
BY _____ ANALYST

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

In the Matter of the Accusation Against: **TED HAJIME KOBASHIGAWA, M.D.** 7275 E. Southgate Drive, Ste. 107 Sacramento, CA 95823 Physician's and Surgeon's Certificate No. A-39352, Respondent.	Case No. 02-96-63666 **ACCUSATION**

The Complainant alleges:

PARTIES

1. Complainant, Ronald Joseph, is the Executive Director of the Medical Board of California (hereinafter the "Board") and brings this accusation solely in his official capacity.

2. On or about November 29, 1982, Physician's and Surgeon's Certificate No. A-39352 was issued by the Board to Ted Hajime Kobashigawa, M.D. (hereinafter "respondent"), and at all

times relevant to the charges brought herein, this license has been in full force and effect. Unless renewed, it will expire on February 28, 1998.

JURISDICTION

3. This accusation is brought before the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs (hereinafter the "Division"), under the authority of the following sections of the California Business and Professions Code (hereinafter "Code") and/or other appropriate statutory enactment:

A. Section 2227 of the Code provides that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act, and recover the costs of probation monitoring if probation is imposed.

B. Section 2234 of the Code provides that unprofessional conduct includes, but is not limited to, the following:

"(b) Gross negligence.

"(c) Repeated negligent acts.

"(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."

C. Section 2236(a) of the Code provides that conviction

of any offense substantially related to the qualifications, functions or duties of a physician and surgeon constitutes unprofessional conduct.

D. Section 2238 of the Code provides that violation of any federal or State statute or regulation that regulates dangerous drugs or controlled substances constitutes unprofessional conduct.

E. Section 2242 of the Code provides that prescribing, dispensing or furnishing dangerous drugs as defined in Code section 4022 without a good faith prior examination and medical indication therefor constitutes unprofessional conduct.

F. Section 2261 of the Code provides that knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct.

G. Section 2262 of the Code provides that creating any false medical record with fraudulent intent constitutes unprofessional conduct.

H. Section 125.3 of the Code provides, in part, that the Board may request the administrative law judge to direct any licentiate found to have committed a violation or violations of the licensing act, to pay the Board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

I. Section 11153 of the Health and Safety Code provides that a prescription for a controlled substance shall be issued only for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice.

J. Section 11157 of the Health and Safety Code provides that no person shall issue a prescription that is false or fictitious in any respect.

K. Section 14107 of the Welfare & Institutions Code provides that it shall be unlawful for any person, with intent to defraud, to present for allowance or payment any false or fraudulent claim for furnishing services or merchandise, knowingly to submit false information for the purpose of obtaining greater compensation than that to which he is legally entitled for furnishing services or merchandise, or knowingly to submit false information for the purpose of obtaining authorization for furnishing of services or merchandise.

L. Section 16.01(a) of the FY97-98 Budget Act of the State of California provides that no funds appropriated may be expended to pay any Medi-Cal claim for any service performed by a physician while that physician's license is under suspension or revocation due to a disciplinary action of the Medical Board of California.

M. Section 16.01(b) of the FY97-98 Budget Act of the State of California provides that no funds appropriated may

be expended to pay any Medi-Cal claim for any surgical service or other invasive procedure performed on any Medi-Cal beneficiary by a physician if that physician has been placed on probation due to a disciplinary action of the Medical Board of California related to the performance of that specific service or procedure on any patient, except in any case where the Board makes a determination during its disciplinary process that there exist compelling circumstances that warrant continued Medi-Cal reimbursement during the probationary period.

4. Respondent is guilty of unprofessional conduct pursuant to Code sections 2234(b), 2234(c), 2234(d), 2234(e), 2236(a), 2238, 2242, 2261, and 2262 as more specifically set forth hereinbelow.

FIRST CAUSE FOR DISCIPLINE
(Gross Negligence)
[Bus. & Prof. Code § 2234(b)]

"Patient" Tauch S[redacted]

5. On or about October 24, 1994, undercover operator SFPI01 (hereinafter referred to as "agent 1"), an Asian female using the name Tauch S[redacted], entered the offices of respondent for the first time. Agent 1 was wearing an electronic surveillance and recording device and her conversations and actions were monitored by investigative personnel. Agent 1 had been instructed to obtain medical treatment from respondent, if possible.

6. Agent 1 was in good mental and physical health and without need of medical or psychiatric treatment or medication from

respondent. Agent 1 indicated to respondent's office staff that she would need the services of a Vietnamese translator in meeting with respondent. Agent 1 also indicated that she wished to use the Medi-Cal card of an acquaintance to obtain medications for transmittal to persons in Cambodia.

7. After agent 1 was taken in to see respondent, respondent prescribed tylenol and ampicillin for agent 1 without a good faith examination and medical indication therefor. For purposes of Medi-Cal billing, respondent falsely and fraudulently coded his diagnosis of agent 1's medical condition as "major depression" without medical indication therefor and falsely and fraudulently billed Medi-Cal thereon.

8. On or about January 17, 1995, respondent prescribed flurbiprofen for arthritis, meclizine for dizziness, tylenol for pain, and imipramine for depression for agent 1. Agent 1 was not present at respondent's offices and was not seen by him on that date. Agent 1 was not suffering from any of the conditions for which the prescribed medications are indicated. Respondent falsely and fraudulently billed Medi-Cal using procedure code 90862, pharmacologic management, for care provided to agent 1 on January 17, 1995, even though agent 1 was not present in respondent's office and was not seen or examined by him on that date.

9. On or about February 24, 1995, respondent prescribed flurbiprofen for arthritis, meclizine for dizziness, tylenol for pain, and imipramine for depression for agent 1. Agent 1 was not present at respondent's offices and was not seen by him on that

date. Agent 1 was not suffering from any of the conditions for which the prescribed medications are indicated. Respondent falsely and fraudulently billed Medi-Cal using procedure code 90862, pharmacologic management, for care provided to agent 1 on February 24,, 1995, even though agent 1 was not present in respondent's office and was not seen or examined by him on that date.

10. On or about March 30, 1995, agent 1 returned to respondent's offices for further treatment. Agent 1 was wearing an electronic surveillance and recording device and her conversations and actions were monitored by investigative personnel. Agent 1 had been instructed to obtain medical treatment from respondent, if possible. Agent 1 was in good mental and physical health and without need of medical or psychiatric treatment or medication from respondent.

11. Agent 1 responded "Fine, thank you," to respondent's question as to her health. When respondent asked whether agent 1 was tired, agent 1 replied, "Just a little bit." When agent 1 further informed respondent that she desired more medication to send to Cambodia, respondent informed agent 1 that if her intent was to divert medication received from respondent she should not tell respondent of her intent. Agent 1 then told respondent "I won't tell you then." Respondent nevertheless prescribed promethaz sp, ibuprofen, tylenol and imipramine to agent 1 without a good faith examination or medical indication therefor, and falsely and fraudulently coded the visit for Medi-Cal billing purposes as 90862, pharmacologic management, and falsely and fraudulently

billed Medi-Cal thereon.

12. On or about April 20, 1995, respondent prescribed acetaminophen with codeine, a controlled substance, for pain and imipramine for depression for agent 1. Agent 1 was not present at respondent's offices and was not seen by him on that date. Agent 1 was not suffering from any of the conditions for which the prescribed medications are indicated, and said prescriptions were without legitimate medical purpose. Respondent falsely and fraudulently billed Medi-Cal using procedure code 90862, pharmacologic management, for care provided to agent 1 on April 20, 1995, even though agent 1 was not present in respondent's office and was not seen or examined by him on that date.

13. On or about May 25, 1995, agent 1 was not present at respondent's offices and was not seen by him on that date. Respondent, however, falsely and fraudulently billed Medi-Cal using procedure code 90862, pharmacologic management, for care provided to agent 1 on May 25, 1995, even though agent 1 was not present in respondent's office and was not seen or examined by him on that date.

14. On or about June 14, 1995, respondent prescribed promethazine syrup, ibuprofen, tylenol and imipramine for agent 1. Agent 1 was not present at respondent's offices and was not seen by him on that date. Agent 1 was not suffering from any of the conditions for which the prescribed medications are indicated. Respondent falsely and fraudulently billed Medi-Cal using procedure code 90862, pharmacologic management, for care provided to agent 1

on June 14, 1995, even though agent 1 was not present in respondent's office and was not seen or examined by him on that date.

15. On or about July 20, 1995, agent 1, accompanied by agents 2 and 3[1], returned to respondent's offices for further treatment. Agent 1 was wearing an electronic surveillance and recording device and her conversations and actions were monitored by investigative personnel. Agent 1 had been instructed to obtain medical treatment from respondent, if possible. Agent 1 was in good mental and physical health and without need of medical or psychiatric treatment or medication from respondent.

16. Agent 1 responded "Yeah," to respondent's question as to whether the previously prescribed medications were helping her. When agents 2 and 3 informed respondent that medication was desired to send to agent 3's family in Cambodia, respondent informed all the agents that medications could not be prescribed if they revealed that their intent was to divert medication received from respondent. Respondent nevertheless prescribed ibuprofen, tylenol and imipramine to agent 1 without a good faith examination or medical indication therefor, and falsely and fraudulently coded the visit for Medi-Cal billing purposes as 90862, pharmacologic management, and falsely and fraudulently billed Medi-Cal thereon.

17. On or about July 26, 1995, respondent prepared and mailed the following false and fraudulent statement concerning the

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1. For full particulars concerning the care provided by respondent to agents 2 and 3, see "Patient" Sam S[redacted] and "Patient" Diep B[redacted] below.

medical condition of agent 1 to the California Department of Social Services in support of agent 1's application for SSI benefits:

> "We saw this patient for about nine months. This patient demonstrated aches and pains, as well as other problems. She has little initiative or motivation. Her adaptability is very poor. She may be depressed with somatization disorder. She would have major problems with personal, social and occupational adjustments. Dictated by: Ted Kobashigawa, M.D."

18. Respondent billed the California Department of Social Services $25.00 for the preparation of the false and fraudulent report indicated in paragraph 17, above.

19. On or about August 29, 1995, respondent prescribed promethazine syrup, flurbiprofen, tylenol and imipramine for agent 1. Agent 1 was not present at respondent's offices and was not seen by him on that date. Agent 1 was not suffering from any of the conditions for which the prescribed medications are indicated. Respondent falsely and fraudulently billed Medi-Cal using procedure code 90862, pharmacologic management, for care provided to agent 1 on August 29, 1995, even though agent 1 was not present in respondent's office and was not seen or examined by him on that date.

20. Respondent falsely and fraudulently entered in the medical records of agent 1 that she was seen in his offices on January 17, 1995, February 24, 1995, April 20, 1995, June 14, 1995, and August 29, 1995, and billed Medi-Cal for treatment provided for her on those false and fraudulent dates.

21. Respondent's psychiatric treatment records of agent

1 are grossly and egregiously inadequate. Specifically, agent 1's treatment records lack:

(a) a medical history;

(b) a pre-interview symptom check-off;

(c) physical examination results, past or current;

(d) a psychiatric history;

(e) a drug or substance abuse history;

(f) a history of prior medications with effects and results;

(g) a drug allergy indication;

(h) a history of past pregnancies and current pregnancy status;

(i) adequate clinic visit records containing:

(A) proper SOAP notes;

(B) overall status report;

(C) mental status report;

(D) reports of necessary lab work;

(j) proper prescriptions containing:

(A) legible, complete prescriptions;

(B) appropriate use of more than one antidepressant;

(C) appropriate use of adequate therapeutic dosages;

(D) appropriate consideration or use of antipsychotics for code billed;

(E) appropriate indications for non-psychiatric

drugs prescribed;

(k) some basis for diagnosis of depression;

(l) justification for billing on dates not seen; and

(m) justification for statements in report provided to Department of Social Services

22. Respondent's treatment records of agent 1 constitute gross negligence within the meaning of Code sections 2234(b).

"Patient" Sam S[redacted]

23. On or about January 17, 1995, undercover operator LAFR01 (hereinafter referred to as "agent 2"), an Asian male using the name Sam S[redacted] entered the offices of respondent for the first time. Agent 2 was wearing an electronic surveillance and recording device and his conversations and actions were monitored by investigative personnel. Agent 2 had been instructed to obtain medical treatment from respondent, if possible.

24. Agent 2 was in good mental and physical health and without need of medical or psychiatric treatment or medication from respondent. Agent 2 indicated to respondent's office staff that he would need the services of a Cambodian translator in meeting with respondent. Agent 2 also indicated that he wished to use the Medi-Cal card of his "sister," i.e., agent 1, to obtain medications for transmittal to agent 1.

25. After agent 2 was taken in to see respondent, respondent purported to obtain agent 2's blood pressure and informed agent 2 that his blood pressure was "high." Upon respondent's inquiry of agent 2 as to whether agent 2 had high

blood pressure, agent 2 replied that to his knowledge he did not. Respondent then prescribed promethaz and ampicillin for agent 2 without a good faith examination and medical indication therefor. For purposes of Medi-Cal billing, respondent falsely and fraudulently coded his diagnosis of agent 2's medical condition as "major depression" without medical indication therefor, and falsely and fraudulently billed Medi-Cal thereon. Agent 2 obtained the prescriptions for agent 1 indicated in paragraph 8, above.

26. After agent 2 had received his prescriptions, he inquired of respondent how he could become qualified to receive Social Security SSI disability payments. Respondent replied to agent 2 that agent 2 had to continue to receive treatment from respondent for another two (2) months and then respondent would begin the process to qualify agent 2 for SSI payments.

27. On or about February 24, 1995, agent 2 returned to respondent's offices for further treatment. Agent 2 was wearing an electronic surveillance and recording device and his conversations and actions were monitored by investigative personnel. Agent 2 had been instructed to obtain medical treatment from respondent, if possible. Agent 2 was in good mental and physical health and without need of medical or psychiatric treatment or medication from respondent.

28. After entering respondent's office, agent 2 answered "Fine, how about you?" to respondent's question as to how he felt. In response to respondent's further question as to whether the medications previously supplied had "helped" agent 2, agent 2

replied "Medication helped." Agent 2 then requested "stronger medicine with codeine," to which respondent replied, after initially stating that such medication was a controlled substance and addictive, that he could provide "a few."

29. Respondent then prescribed tylenol for pain, imipramine for depression, meclizine for dizziness and acetaminophen with codeine, a controlled substance, for pain to agent 2 without a good faith examination and medical indication therefor and without a legitimate medical purpose. For purposes of Medi-Cal billing, respondent falsely and fraudulently coded his diagnosis of agent 2's medical condition as "major depression" without medical indication therefor, and falsely and fraudulently billed Medi-Cal thereon. Agent 2 obtained the prescriptions for agent 1 indicated in paragraph 9, above.

30. On or about March 30, 1995, respondent prescribed masanti suspension, meclizine, tylenol, and imipramine for agent 2. Agent 2 was not present at respondent's offices and was not seen by him on that date. Agent 2 was not suffering from any of the conditions for which the prescribed medications are indicated. Respondent falsely and fraudulently billed Medi-Cal using procedure code 90862, pharmacologic management, for care provided to agent 2 on March 30, 1995, even though agent 2 was not present in respondent's office and was not seen or examined by him on that date.

31. On or about April 20, 1995, agent 2 returned to respondent's offices for further treatment. Agent 2 was wearing an

electronic surveillance and recording device and his conversations and actions were monitored by investigative personnel. Agent 2 had been instructed to obtain medical treatment from respondent, if possible. Agent 2 was in good mental and physical health and without need of medical or psychiatric treatment or medication from respondent.

32. After entering respondent's office, agent 2 answered "Fine," to respondent's question as to how he was. In response to respondent's question as to whether agent 2 wanted the same medication previously provided to his "sister," i.e., agent 1, agent 2 responded "Whatever." Upon agent 2's request for medication containing codeine, a controlled substance, respondent prescribed acetaminophen with codeine and imipramine for agents 1 and 2 without a good faith examination or medical indication therefor and without a legitimate medical purpose. For purposes of Medi-Cal billing, respondent falsely and fraudulently coded his diagnosis of agent 2's medical condition as "major depression" without medical indication therefor, and falsely and fraudulently billed Medi-Cal thereon. Agent 2 obtained the prescriptions for agent 1 indicated in paragraph 12, above.

33. Respondent falsely and fraudulently billed Medi-Cal using procedure code 90862, pharmacologic management, for care provided to agent 2 on May 25, 1995, even though agent 2 was not seen or examined by him on that date.

34. On or about June 14, 1995, agent 2 returned to respondent's offices for further treatment. Agent 2 was wearing an

electronic surveillance and recording device and his conversations and actions were monitored by investigative personnel. Agent 2 had been instructed to obtain medical treatment from respondent, if possible. Agent 2 was in good mental and physical health and without need of medical or psychiatric treatment or medication from respondent.

35. After entering respondent's office, agent 2 responded "Good," to respondent's question as to how he felt. Agent 2 stated that the medications previously provided had "helped." Agent 2 also replied that the medications previously provided to his "sister," i.e., agent 1, had also "helped" her as well. Respondent then prescribed APAP with codeine, a controlled substance, imipramine, indomethacin, tylenol and promethazine syrup to agent 2 without a good faith examination or medical indication therefor and without a legitimate medical purpose. For purposes of Medi-Cal billing, respondent falsely and fraudulently coded his diagnosis of agent 2's medical condition as "major depression" without medical indication therefor, and falsely and fraudulently billed Medi-Cal thereon. Agent 2 obtained the prescriptions for agent 1 indicated in paragraph 14, above.

36. On or about July 20, 1995, agent 2, accompanied by agents 1 and 3[2/], returned to respondent's offices for further treatment. Agent 2 was wearing an electronic surveillance and recording device and his conversations and actions were monitored

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2. For full particulars concerning the care provided by respondent to agents 1 and 3, see "Patient" Tauch S[redacted] and see "Patient" Diep B[redacted], below.

by investigative personnel. Agent 2 had been instructed to obtain medical treatment from respondent, if possible. Agent 2 was in good mental and physical health and without need of medical or psychiatric treatment or medication from respondent.

37. Prior to entering respondent's office, agent 2 had found out from respondent's office staff that documentary materials needed for Social Security SSI disability payments had been received for processing and completion in respondent's offices.

38. After entering respondent's office, agent 2 introduced agent 3 as his wife. In response to respondent's question as to the purpose of agent 3's visit, agent 2 and agent 3 stated that they wished to obtain medication to send to agent 3's family in Vietnam. Respondent replied that if they stated that that was the purpose for the medication, they could not receive medication, but if they stated that the medication was for personal use, it could be provided.

39. After agent 2 requested a prescription for a medication containing codeine, respondent prescribed flurbiprofen, klonopin, APAP with codeine, a controlled substance, imipramine, and tylenol for agent 2 without a good faith examination or medical indication therefor and without legitimate medical purpose. For purposes of Medi-Cal billing, respondent falsely and fraudulently coded his diagnosis of agent 2's medical condition as "major depression" without medical indication therefor, and falsely and fraudulently billed Medi-Cal thereon.

40. Prior to the departure of agents 1, 2, and 3 from

respondent's office, respondent told agent 2 that the costs associated with filing the documentation from respondent's office for Social Security SSI disability benefits as indicated in paragraph 37, above, would be paid by the California Department of Social Services.

41. On or about July 26, 1995, respondent prepared and mailed the following false and fraudulent statement concerning the medical condition of agent 2 to the California Department of Social Services in support of agent 2's application for SSI benefits:

> "We saw this patient for approximately a year and a half. This patient demonstrated aches and pains, as well as some other problems including insomnia. He may have some depression and somatic problems. His adaptability is very poor. Dictated by: Ted Kobashigawa, M.D."

42. Respondent billed the California Department of Social Services $25.00 for the preparation of the false and fraudulent report indicated in paragraph 41, above.

43. On or about August 29, 1995, agent 2 returned to respondent's offices for further treatment. Agent 2 was wearing an electronic surveillance and recording device and his conversations and actions were monitored by investigative personnel. Agent 2 had been instructed to obtain medical treatment from respondent, if possible. Agent 2 was in good mental and physical health and without need of medical or psychiatric treatment or medication from respondent.

44. Upon agent 2's entering the offices of respondent,

after greeting respondent in the waiting area and responding "Pretty good," to respondent's question of how he felt, and "I'm fine," to respondent's later question of how he was, agent 2 had no further personal contact with respondent. Respondent's office staff questioned and warned agent 2 about his statements that the medication prescribed for him and members of his "family" was being diverted to other than the personal use of the person for whom it was prescribed. After agent 2 stated that he merely wanted to tell respondent the truth, respondent's staff responded that if he told the truth he would not get the medications.

45. Thereafter, when agent 2 said he did not want to see respondent, he merely wanted to obtain further medication, respondent's office staff went into respondent's office and returned with three prescriptions prepared by respondent for agents 1, 2, and 3. Upon agent 2's further indication that he wanted a medication containing codeine, a controlled substance, respondent's staff again entered respondent's office and thereafter returned with a prescription prepared by respondent for agent 2 for tylenol, acetaminophen with codeine, a controlled substance, klonopin and imipramine. The prescription was written by respondent without a good faith examination or medical indication therefor and without legitimate medical purpose. For purposes of Medi-Cal billing, respondent falsely and fraudulently coded his diagnosis of agent 2's medical condition as "major depression" without medical indication therefor, and falsely and fraudulently billed Medi-Cal thereon.

46. Respondent falsely and fraudulently entered in the medical records of agent 2 that he was seen in his offices on March 30, 1995, and August 29, 1995, and falsely and fraudulently billed Medi-Cal for treatment provided for him on those false and fraudulent dates.

47. Respondent's psychiatric treatment records of agent 2 are grossly and egregiously inadequate. Specifically, agent 2's treatment records lack:

(a) a medical history;

(b) a pre-interview symptom check-off;

(c) physical examination results, past or current;

(d) a psychiatric history;

(e) a drug or substance abuse history;

(f) a history of prior medications with effects and results;

(g) a drug allergy indication;

(h) adequate clinic visit records containing:

(A) proper SOAP notes;

(B) overall status report;

(C) mental status report;

(D) reports of necessary lab work;

(j) proper prescriptions containing:

(A) legible, complete prescriptions;

(B) appropriate use of more than one antidepressant;

(C) appropriate use of adequate therapeutic

dosages;

(D) appropriate consideration or use of antipsychotics for code billed;

(E) appropriate indications for non-psychiatric drugs prescribed;

(F) appropriate indications for prescription of klonopin, with necessary anti-drug dependency screening

(G) appropriate indications for prescription of opiate contained in codeine;

(k) some basis for diagnosis of depression;

(l) justification for billing on dates not seen; and

(m) justification for statements in report provided to Department of Social Services

48. Respondent's treatment records of agent 2 constitute gross negligence within the meaning of Code section 2234(b).

SECOND CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)
[Bus. & Prof. Code § 2234(c)]

49. Complainant realleges paragraphs 5-48, above, and incorporates them herein by reference as if fully set forth at this point.

50. Respondent's conduct as set forth in paragraphs 22 and 48, above, constitutes repeated negligent acts within the meaning of Code section 2234(c).

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THIRD CAUSE FOR DISCIPLINE
(Incompetence)
[Bus. & Prof. Code § 2234(d)]

51. Complainant realleges paragraphs 5-48, above, and incorporates them herein by reference as if fully set forth at this point.

52. Respondent's treatment records of agents 1 and 2, individually and in the aggregate, constitute incompetence within the meaning of Code section 2234(d).

FOURTH CAUSE FOR DISCIPLINE
(Dishonesty)
[Bus. & Prof. Code § 2234(e)]

53. Complainant realleges paragraphs 5-48, above, and incorporates them herein by reference as if fully set forth at this point.

"Patient" Diep S[redacted]

54. On or about July 20, 1995, undercover operator SJHE01 (hereinafter referred to as "agent 3"), an Asian female using the name Diep S[redacted] and posing as the "wife" of agent 2, entered respondent's offices for the first time. Agent 3, accompanied by agents 1 and 2[3], was wearing an electronic surveillance and recording device and her conversations and actions were monitored by investigative personnel. Agent 3 had been instructed to obtain medical treatment from respondent, if possible. Agent 3 was in good mental and physical health and without need of medical or psychiatric treatment or medication from

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3. For full particulars concerning the care provided by respondent to agents 1 and 2, see "Patient" Tauch S[redacted] and "Patient" Sam S[redacted].

respondent.

55. After entering respondent's office and being asked by respondent "What problem do you have," agent 3 replied, "I have no problem. I just want some medicine." After she was asked by respondent for what purpose she wanted the medicine, agent 3 replied she wanted the medicine to send to "her family in Vietnam." After respondent told agent 3 that if she told respondent or his staff that she wanted to divert the medication to another person, she could not receive medication, agent 3 said, "Okay," and subsequently stated, "I need it."

56. After being asked by respondent again what type of medicine she wanted, agent 3 stated "Sleeping medicine." Respondent then prescribed agent 3 imipramine without a good faith examination or medical indication therefor. For purposes of Medi-Cal billing, respondent falsely and fraudulently coded his diagnosis of agent 3's medical condition as "major depression" without medical indication therefor, and falsely and fraudulently billed Medi-Cal thereon.

57. On or about August 29, 1995, respondent prescribed antacid tab plus, imipramine and ibuprofen for agent 3. Agent 3 was not present at respondent's offices and was not seen by him on that date. Agent 3 was not suffering from any of the conditions for which the prescribed medications are indicated. Respondent falsely and fraudulently billed Medi-Cal using procedure code 90862, pharmacologic management, for care provided to agent 3 on August 29, 1995, even though agent 3 was not present in respondent's

office and was not seen or examined by him on that date.

58. Respondent's conduct of creating false and fraudulent billing codes and falsely and fraudulently billing Medi-Cal for services as described by those false and fraudulent codes as set forth in paragraphs 7, 8, 9, 11, 12, 13, 14, 16, 19, 25, 29, 30, 32, 33, 35, 39, 45, 56, or 57 constitutes dishonesty within the meaning of Code section 2234(e).

FIFTH CAUSE FOR DISCIPLINE
(Dishonesty)
[Bus. & Prof. Code § 2234(e)]

59. Complainant realleges paragraphs 5-48, above, and incorporates them herein by reference as if fully set forth at this point.

60. Respondent's conduct in creating and submitting false and fraudulent medical reports in support of claims for Social Security SSI benefits as set forth in paragraphs 17, 18, 41, or 42, above, constitutes dishonesty within the meaning of Code section 2234(e).

SIXTH CAUSE FOR DISCIPLINE
(Dishonesty)
[Bus. & Prof. Code § 2234(e)]

61. Complainant realleges paragraphs 5-48, above, and incorporates them herein by reference as if fully set forth at this point.

62. Respondent's conduct in entering false and fraudulent dates of service in patient records for the purpose of facilitating false and fraudulent Medi-Cal billings as set forth in paragraph 20 or paragraph 46 constitutes dishonesty within the

meaning of Code section 2234(e).

SEVENTH CAUSE FOR DISCIPLINE
(Violation of Drug Statutes)
[Bus. & Prof. Code § 2238]

63. Complainant realleges paragraphs 5-48 and 54-57, above, and incorporates them herein by reference as if fully set forth at this point.

64. Respondent's conduct in issuing false, fraudulent and fictitious prescriptions without legitimate medical purpose as set forth in paragraphs 7, 8, 9, 11, 12, 14, 16, 19, 25, 29, 30, 32, 35, 39, 45, 56, or 57 constitutes violations of Health and Safety Code sections 11153 and 11157, and therefore also constitutes unprofessional conduct within the meaning of Code section 2238.

EIGHTH CAUSE FOR DISCIPLINE
(Nonindicated Prescribing)
[Bus. & Prof. Code § 2242]

65. Complainant realleges paragraphs 5-48 and 54-57, above, and incorporates them herein by reference as if fully set forth at this point.

66. Respondent's conduct in issuing prescriptions without a prior good faith examination and medical indication therefor as set forth in paragraphs 7, 8, 9, 12, 14, 16, 19, 25, 29, 30, 32, 35, 39, 45, 56, or 57 constitutes unprofessional conduct within the meaning of Code section 2242.

NINTH CAUSE FOR DISCIPLINE
(False Representation in Medical Record)
[Bus. & Prof. Code § 2261]

67. Complainant realleges paragraphs 5-48, above and incorporates them herein by reference as if fully set forth at this

point.

68. Respondent's conduct in creating and submitting false and fraudulent medical reports in support of claims for Social Security SSI benefits as set forth in paragraphs 17, 18, 41, or 42, above, constitutes the knowing making of a document related to the practice of medicine that falsely represents the existence of a state of facts and therefore also constitutes unprofessional conduct within the meaning of Code section 2261.

TENTH CAUSE FOR DISCIPLINE
(False Representation in Medical Record)
[Bus. & Prof. Code § 2261]

69. Complainant realleges paragraphs 5-48, above and incorporates them herein by reference as if fully set forth at this point.

70. Respondent's conduct in entering false and fraudulent dates of service in patient records for the purpose of facilitating false and fraudulent Medi-Cal billings as set forth in paragraph 20 or paragraph 46 constitutes the knowing making of a document related to the practice of medicine that falsely represents the existence of a state of facts and therefore also constitutes unprofessional conduct within the meaning of Code section 2261.

ELEVENTH CAUSE FOR DISCIPLINE
(False Representation in Medical Record)
[Bus. & Prof. Code § 2261]

71. Complainant realleges paragraphs 5-48 and 54-57, above, and incorporates them herein by reference as if fully set forth at this point.

72. Respondent's conduct of creating false and fraudulent billing codes and falsely and fraudulently billing Medi-Cal for services as described by those false and fraudulent codes as set forth in paragraphs 7, 8, 9, 11, 12, 13, 14, 16, 19, 25, 29, 30, 32, 33, 35, 39, 45, 56, or 57 constitutes the knowing making of a document related to the practice of medicine that falsely represents the existence of a state of facts and therefore also constitutes unprofessional conduct within the meaning of Code section 2261.

TWELFTH CAUSE FOR DISCIPLINE
(Fraudulent Creation of False Medical Record)
[Bus. & Prof. Code § 2262]

73. Complainant realleges paragraphs 5-48, above and incorporates them herein by reference as if fully set forth at this point.

74. Respondent's conduct in creating and submitting false and fraudulent medical reports in support of claims for Social Security SSI benefits as set forth in paragraphs 17, 18, 41, or 42, above, constitutes the creation of false medical records with fraudulent intent, and therefore also constitutes unprofessional conduct within the meaning of Code section 2262.

THIRTEENTH CAUSE FOR DISCIPLINE
(Fraudulent Creation of False Medical Record)
[Bus. & Prof. Code § 2262]

75. Complainant realleges paragraphs 5-48, above, and incorporates them herein by reference as if fully set forth at this point.

77. Respondent's conduct in entering false and

fraudulent dates of service in patient records for the purpose of facilitating false and fraudulent Medi-Cal billings as set forth in paragraph 20 or paragraph 46 constitutes the creation of false medical records with fraudulent intent, and therefore also constitutes unprofessional conduct within the meaning of Code section 2262.

FOURTEENTH CAUSE FOR DISCIPLINE
(Fraudulent Creation of False Medical Record)
[Bus. & Prof. Code § 2262]

78. Complainant realleges paragraphs 5-48 and 54-57, above, and incorporates them herein by reference as if fully set forth at this point.

79. Respondent's conduct of creating false and fraudulent billing codes and falsely and fraudulently billing Medi-Cal for services as described by those false and fraudulent codes as set forth in paragraphs 7, 8, 9, 11, 12, 13, 14, 16, 19, 25, 29, 30, 32, 33, 35, 39, 45, 56, or 57 constitutes the creation of false medical records with fraudulent intent, and therefore also constitutes unprofessional conduct within the meaning of Code section 2262.

FIFTEENTH CAUSE FOR DISCIPLINE
(Conviction for Offense Substantially Related)
[Bus. & Prof. Code § 2236(a)]

80. Complainant realleges paragraphs 5-48 and 54-57, above, and incorporates them herein by reference as if fully set forth at this point.

81. On or about July 10, 1997, a First Amended Felony Complaint was filed against respondent in a criminal proceeding styled People of California v. My Lieng Thi Doung and Ted H.

Kobashigawa, Sacramento Municipal Court No. 96F04034. On the same date, July 10, 1997, respondent entered his guilty plea and was convicted on a felony violation of Welfare & Institutions Code section 14107 for willfully, unlawfully and knowingly presenting and causing to be presented a false and fraudulent claim for payment of money for Medi-Cal benefits for services which were not provided.

82. Respondent's conduct and conviction as set forth in paragraph 81, above, constitutes conviction of an offense substantially related to the qualifications, functions or duties of a physician and surgeon, and therefore also unprofessional conduct within the meaning of Code section 2236(a).

PRAYER

WHEREFORE complainant requests that a hearing be held on the matters herein alleged and that following the hearing the Division issue a decision:

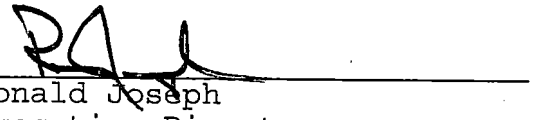
1. Revoking or suspending Physician's and Surgeon's Certificate Number A-39352 heretofore issued to respondent Ted Hajime Kobashigawa, M.D.;

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

3. Ordering respondent to pay the Division the actual and reasonable costs of the investigation and enforcement of this case and, if probation is imposed, the costs of probation monitoring; and

4. Taking such other and further action as the Division may deem necessary or proper.

DATED: January 6, 1998.



Ronald Joseph
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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