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9

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

15 GENE WASHINGTON LIN, M.D.
14677 Via Bettona
San Diego, CA 92127

16 Physician's and Surgeon's Certificate No.
A 63944

17 Respondent.
18

Case No. 10-2007-183009

OAH No. 2008040272

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
20 proceeding that the following matters are true:

21 **PARTIES**

22 1. Barbara Johnston (Complainant) is the Executive Director of the Medical
23 Board of California. She brought this action solely in her official capacity and is represented in this
24 matter by Edmund G. Brown Jr., Attorney General of the State of California, by Martin W. Hagan,
25 Deputy Attorney General.

26 2. GENE WASHINGTON LIN, M.D. (Respondent), is represented in this
27 proceeding by attorney Mark Brandon, Esq., whose address is Brandon & Associates, 3695 Third
28 Avenue, San Diego, CA 92103.

CULPABILITY

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8. Respondent admits that Complainant could establish a *prima facie* case at an administrative hearing with respect to the charges and allegations contained in Accusation No. 10-2007-183009 and that he has thereby subjected his Physician's and Surgeon's Certificate No. A63944 to disciplinary action. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

9. Respondent understands and agrees that if he ever applies for licensure or petitions for reinstatement of his Physician's and Surgeon's Certificate No. A 63944, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 10-2007-183009, and each of them, separately and severally, shall be deemed true, correct and fully admitted by Respondent when the Board determines whether to grant or deny the application for petition.

10. Should Respondent 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 Accusation No. 10-2007-183009, and each of them, separately and severally, 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.

11. Respondent hereby surrenders his Physician's and Surgeon's Certificate No. A 63944 for the Board's formal acceptance. 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 No. A 63944 without further process.

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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 surrender, without notice to or participation by Respondent or his counsel. By signing this 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 of License and 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.

OTHER MATTERS

13. This Stipulated Surrender of License and Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

14. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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 63944, issued to Respondent GENE WASHINGTON LIN, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of Respondent's Physician's and Surgeon's Certificate No. A 63944 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.

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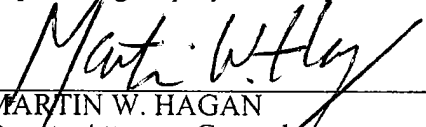
I have read and fully discussed with Respondent GENE WASHINGTON LIN, M.D.,
the terms and conditions and other matters contained in this Stipulated Surrender of License and
Order. I approve its form and content.

DATED: 9/18/08 
MARK BRANDON, ESQ.
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: 9/25/08 EDMUND G. BROWN JR., Attorney General
of the State of California

THOMAS S. LAZAR
Supervising Deputy Attorney General

MARTIN W. HAGAN
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: SD2007803340
80282486.wpd

Exhibit A

Accusation No. 10-2007-183009

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *March 13 20 08*
BY *[Signature]*

1 EDMUND G. BROWN JR., Attorney General
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11 In the Matter of the Accusation Against:

Case No. 10-2007-183009

12 GENE WASHINGTON LIN, M.D.
13 14677 Via Bettona, Suite 110
San Diego, CA 92127

A C C U S A T I O N

14 Physician's and Surgeon's Certificate No.
15 A 63944

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Barbara Johnston (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer
21 Affairs.

22 2. On or about November 21, 1997, the Medical Board of California issued
23 Physician's and Surgeon's Certificate Number A 63944 to GENE WASHINGTON LIN, M.D.
24 (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times
25 relevant to the charges brought herein and will expire on July 31, 2009, unless renewed.

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"(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.

" . . . "

6. Unprofessional conduct under California Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.^{1/}

7. Section 726 of the Code states:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

"This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship."

8. Section 729 of the Code states:

"(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client,

1. *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

1 or with a former patient or client when the relationship was terminated primarily for
2 the purpose of engaging in those acts, unless the physician and surgeon,
3 psychotherapist, or alcohol and drug abuse counselor has referred the patient or client
4 to an independent and objective physician and surgeon, psychotherapist, or alcohol
5 and drug abuse counselor recommended by a third-party physician and surgeon,
6 psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual
7 exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse
8 counselor.

9 “....

10 “For purposes of subdivision (a), in no instance shall consent of the patient
11 or client be a defense. However, physicians and surgeons shall not be guilty of
12 sexual exploitation for touching any intimate part of a patient or client unless the
13 touching is outside the scope of medical examination and treatment, or the touching
14 is done for sexual gratification.

15 “(c) For purposes of this section:

16 “....

17 “(3) ‘Sexual contact’ means sexual intercourse or the touching of an intimate
18 part of a patient for the purpose of sexual arousal, gratification, or abuse.

19 “....”

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Sexual Abuse or Misconduct with a Patient)**

22 9. Respondent is subject to disciplinary action under section 2227, as set forth
23 in Sections 726 and 729, in that Respondent engaged in sexual misconduct with one of his patients.

24 The circumstances are as follows:

25 (a) Patient M.H. is a Hispanic female with a history of severe psychiatric
26 problems. She was subjected to sexual abuse as a child and sexually assaulted as a
27 young adult.

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1 (b) On or about September 19, 2005, Respondent began treating Patient
2 M.H. as her attending psychiatrist while she was at Alvarado Parkway Institute
3 (Alvarado), a psychiatric facility. At the time of her admission to Alvarado, Patient
4 M.H. was thirty-three (33) years old. Patient M.H. was hospitalized at Alvarado for
5 severe depression, anxiety, and acute suicidal thoughts. Her admission diagnosis was
6 "[m]ajor depressive disorder, recurrent and severe." Her Global Assessment of
7 Functioning (GAF) score was 20 at time of admission. Patient M.H. was discharged
8 from Alvarado on September 26, 2005. Following her discharge from Alvarado,
9 Patient M.H. continued to be treated by Respondent on an outpatient basis at
10 Psychiatric Centers of San Diego (PCSD) at the Chula Vista Clinic.

11 (c) On or about September 27, 2005, Patient M.H. was seen on an
12 outpatient basis by Respondent at the PCSD Chula Vista Clinic. The Physician
13 Initial Evaluation form prepared, in part, by Respondent lists, among other things,
14 history of depression, anxiety and post traumatic stress disorder and indicates "Pt
15 [patient] is child like in behavior at times . . ." The Evaluation form also notes under
16 the "[c]urrent physical/sexual abuse" section that Patient M.H. was "raped while a
17 teenager in her village" which was located in Mexico. The family psychiatric history
18 includes a mother listed as having Depressive Disorder. The treatment plan
19 discussed between Patient M.H. and Respondent listed an estimated six to eight
20 sessions in the future with the next session scheduled in four to six weeks.

21 (d) On or about October 28, 2005, Patient M.H. was seen on an outpatient
22 basis at the PCSD Chula Vista office by another psychiatrist, Dr. N.N., because
23 Respondent was unavailable due to illness.

24 (e) On or about May 25, 2006, Patient M.H. failed to show up for her
25 scheduled outpatient appointment at PCSD in Chula Vista.

26 (f) On or about November 9, 2006, Patient M.H. was admitted, once
27 again, to Alvarado for "worsening depressive symptoms as well as acute suicidal
28 thoughts." She was admitted to Alvarado "for restabilization on medications, to

1 prevent harm to self and others, and to determine the most appropriate level of post-
2 discharge placement." Respondent was her attending psychiatrist. Patient M.H.'s
3 admission diagnosis was "[b]ipolar II disorder, currently depressed. Rule out major
4 depressive disorder. History of posttraumatic stress disorder." Her GAF score was
5 22 at time of admission. Patient M.H. was voluntarily discharged from Alvarado on
6 November 13, 2006. The discharge summary provided that "[t]he patient will follow
7 up with Dr. Lin on 11/16/06 at 1645 hours."

8 (g) On or about November 16, 2006, Patient M.H. was seen by
9 Respondent at PCSD in Chula Vista on an outpatient basis for a "medication visit."
10 The treatment plan was listed as continuing medications and return to visit in four to
11 six weeks.

12 (h) On or about December 5, 2006, Patient M.H. was seen by Respondent
13 at PCSD in Chula Vista on an outpatient basis for a "medication visit." The
14 treatment plan was listed as continuing medications and return to visit in four to six
15 weeks.

16 (i) Beginning in December 2006, Patient M.H. began therapy sessions
17 with A.P., a licensed marriage and family therapist, at PCSD in Chula Vista, in
18 addition to the medication management services provided by Respondent.
19 Respondent and A.P. would have periodic discussions about Patient M.H.'s care and
20 treatment.

21 (j) On or about February 5, 2007, Patient M.H. was seen by Respondent
22 at PCSD in Chula Vista on an outpatient basis for a "medication visit." The
23 treatment plan was listed as continuing medications and return to visit in four to six
24 weeks.

25 (k) On or about February 6, 2007, Respondent called "911" after
26 receiving a call from Patient M.H. of a possible suicide attempt. A Chula Vista
27 police officer responded to Patient M.H.'s residence. Patient M.H. informed the
28 officer that she had taken over twenty pills, she wanted to die, and that she had

1 written a note to her family telling them she was afraid to live and that she was sorry.
2 Patient M.H. was taken to Paradise Valley Hospital and then transferred to Sharp
3 Mesa Vista Hospital on a Welfare and Institutions Code 5150² basis. Her attending
4 psychiatrist at Sharp Mesa Vista was Dr. P.B. The admission diagnosis was "Bipolar
5 disorder, probably mixed episode with psychotic features." Her GAF score at time
6 of admission was "approximately 20-25." At the time of her admission to Sharp
7 Mesa Vista, Patient M.H. was reported as being "followed by Dr. Lin for psychiatric
8 medication management." During her admission, Patient M.H. described a prior
9 history of molestation and rape. Patient M.H. was discharged from Sharp Mesa Vista
10 Hospital on or about February 23, 2007.

11 (l) On or about March 1, 2007, Patient M.H. was seen by Respondent at
12 PCSD in Chula Vista on an outpatient basis by Respondent for a "medication visit."
13 The treatment plan was listed as continuing medications and return to visit in two to
14 three weeks.

15 (m) On or about March 6 or 7, 2007, Patient M.H. called Respondent to
16 tell him goodbye and indicated an intent to commit suicide. Respondent called "911"
17 and the Chula Vista Police responded to Patient M.H.'s residence. After arriving at
18 the residence, the police discovered that Patient M.H. had attempted suicide by trying
19 to overdose on Zyprexa and Haldol. Patient M.H. was admitted to Sharp Mesa Vista
20 Intensive Care Unit (ICU) on a Welfare and Institutions 5150 hold. While at the
21 ICU, it was discovered that Patient M.H. was approximately six weeks pregnant.
22 Patient M.H.'s psychiatric diagnosis at the time of admission to Sharp Mesa Vista

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24 2. Welfare and Institutions Code section 5150 provides, in pertinent part, "[w]hen any
25 person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely
26 disabled, a peace officer . . . or other professional person designated by the county may, upon
27 probable cause, take, or cause to be taken, the person into custody and place him or her in a
28 facility designated by the county and approved by the State Department of Mental Health as a
facility for 72-hour treatment and evaluation."

1 was "[b]ipolar disorder, depressive episode, rule out associated psychotic features[.]
2 History of post-traumatic stress disorder." Her GAF score at time of admission was
3 20-25. Patient M.H. would remain at Sharp Mesa Vista until her discharge on or
4 about April 18, 2007.

5 (n) On or about March 20, 2007, the Medical Board received a telephone
6 complaint from M.P., with Child Protective Services, indicating that Patient M.H.
7 had informed her daughter that she was six weeks pregnant with Respondent's child.
8 The daughter also reported that she had seen a text message from Respondent to
9 Patient M.H. which was of a personal nature. M.P. reported that Child Protective
10 Services was assisting the family because Patient M.H. had attempted suicide three
11 times within the past year.

12 (o) On or about March 20, 2007, Dr. P.B. spoke with Respondent to
13 update him of the status of Patient M.H. This conversation was documented in a
14 Progress Note of the same date. The progress note states, in pertinent part, "[h]e
15 [Respondent] is aware of the patient's delusional thoughts regarding being involved
16 in a sexual relationship with him. Consequently, the two of us have agreed that it is
17 probably inappropriate for the patient to follow up with him after discharge, and both
18 he and the patient are in agreement with this. Dr. Lin mentioned that he would be
19 contacting the patient's husband as well, and I encouraged him to do so."

20 (p) On or about March 27, 2007, Patient M.H. discussed the specifics of
21 her sexual relationship with Respondent with one of her social workers. During this
22 conversation, Patient M.H. stated that she was not sexually active with anyone else
23 and her husband could not have been the father of her child because he was working
24 in Tijuana at the time the child would have been conceived.

25 (q) On or about March 28, 2007, Patient M.H. filed a written complaint
26 with the California Medical Board against Respondent indicating, among other
27 things, that she had gone to a hotel with Respondent, now she is pregnant, and
28 Respondent had admitted to her and her husband that he was wrong.

1 (r) At some time in late March or early April 2007, Patient M.H.'s
2 husband received a telephone call from Respondent in which Respondent allegedly
3 apologized for having a relationship with Patient M.H.

4 (s) On or about April 6, 2007, the attending psychiatrist, Dr. P.B.,
5 prepared a progress note which indicated among other things, "Clearly, the patient's
6 treatment has been impacted by the above-noted issues involving her outside
7 psychiatrist [Respondent], particularly in light of her history of traumatization and
8 previous diagnosis of post traumatic stress disorder."

9 (t) On or about April 9, 2007, the attending psychiatrist, Dr. P.B.,
10 prepared a progress note which indicated among, other things, "She [Patient M.H.]
11 was noted to be crying 'uncontrollably' according to nursing staff while she was on
12 the phone with her husband. At that time, the patient had stated that her husband had
13 just found a video of her with her outside psychiatrist Dr. Lin on her cell phone. The
14 husband was upset about this."

15 (u) On or about April 11, 2007, the attending psychiatrist, Dr. P.B.,
16 prepared a progress note which indicated among, other things, "... [Patient M.H.]
17 continues to harbor significant feelings of anger and resentment towards her outside
18 psychiatrist for what he did to her. The patient is having difficulty coping with these
19 ambivalent feelings that she has towards him."

20 (v) On or about April 24, 2007, Respondent resigned his staff privileges
21 at Sharp Mesa Vista for "personal reasons."

22 (w) On or about May 11, 2007, Sharp Mesa Vista Hospital filed a
23 Business and Professions Code section 805 report indicating that "[f]ollowing notice
24 of an impending investigation . . . Licentiate [Respondent] resigned from staff." An
25 addendum to the 805 report further indicated that Respondent resigned during the
26 course of a preliminary investigation into the alleged sexual relationship between
27 Respondent and Patient M.H.

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(x) At some time in May 2007, Respondent resigned from Psychiatric Centers of San Diego.

(y) On or about June 13, 2007, Patient M.H. was interviewed by a Medical Board investigator. During the course of her interview, Patient M.H. stated, among other things, that she first met Respondent during her stay at Alvarado. Following her discharge from Alvarado, Patient M.H. continued treatment with Respondent on an outpatient basis. Patient M.H. confirmed that she and Respondent engaged in sex on multiple occasions while Respondent was her psychiatrist. Patient M.H. noted that Respondent rarely wore a condom because he did not like wearing one. During the interview, Patient M.H. stated she believed she became pregnant by Respondent in early or mid-January 2007. During the time she was having sex with Respondent, Patient M.H. was not having sex with her husband or anyone else besides Respondent. Patient M.H. also reported having taken a picture of her and Respondent kissing which was later destroyed when Patient M.H.'s husband found the picture on her cell phone. Patient M.H. stated the last time she had sex with Respondent was on March 5, 2007, a day or two before she attempted to overdose and was admitted to Sharp Mesa Vista on a 5150 hold.

(z) On or about June 13, 2007, Patient M.H.'s husband was interviewed by a Medical Board investigator. During the course of his interview, the husband confirmed, among other things, that he received a call from Respondent in which Respondent apologized for having a relationship with Patient M.H.

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1 (aa) On or about September 9, 2007, Respondent submitted to an interview
2 before a Medical Board investigator. During the course of this interview Respondent
3 stated he first met Patient M.H. when she was admitted to Alvarado and thereafter
4 continued treating her on an outpatient basis at PCSD in the Chula Vista clinic.
5 Respondent confirmed the appointments with Patient M.H. usually took place in the
6 late afternoon or early evening. During the interview, Respondent was asked specific
7 questions pertaining to the allegations of a sexual relationship with Patient M.H.
8 which Respondent refused to answer.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Gross Negligence)**

11 10. Respondent is subject to disciplinary action under section 2227 and 2234, as
12 defined by section 2234, subdivision (b), in that Respondent was grossly negligent in his care and
13 treatment of Patient M.H., as more particularly alleged herein.

14 (a) Paragraph 9, above, is incorporated by reference and realleged as if
15 fully set forth herein.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Repeated Negligent Acts)**

18 11. Respondent is subject to disciplinary action under section 2227 and 2234, as
19 defined by section 2234, subdivision (c), in that Respondent committed repeated negligent acts in
20 his care and treatment of Patient M.H., as more particularly alleged herein.

21 (a) Paragraphs 9 and 10, above, are incorporated by reference and
22 realleged as if fully set forth herein.

23 (b) Respondent committed repeated negligent acts in his care and
24 treatment of Patient M.H. which included, but was not limited to, having multiple
25 sexual relations with one of his patients, having sexual relations with his patient that
26 had severe psychiatric problems, and committing repeated boundary violations.

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FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

12. Respondent is further subject to disciplinary action under sections 2227 and 2234 of the Code in that Respondent has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly described hereinafter:


(a) Paragraphs 9, 10 and 11, above, are incorporated by reference and realleged as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 63944, issued to GENE WASHINGTON LIN, M.D.;
2. Revoking, suspending or denying approval of GENE WASHINGTON LIN, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
3. If placed on probation, ordering GENE WASHINGTON LIN, M.D. to pay the Medical Board of California the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: March 13, 2008



BARBARA JOHNSTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SD2007803340
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