

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 COLLEEN M. MCGURRIN
Deputy Attorney General
4 State Bar Number 147250
300 South Spring Street, Suite 1702
5 Los Angeles, California 90013
Telephone: (213) 269-6546
6 Facsimile: (213) 897-9395
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *March 7 20 18*
BY *[Signature]* ANALYST

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 800-2015-017882

11 BRIAN JOSEPH CASSMASSI, M.D.
12 26135 Mureau Road, Suite 101
13 Calabasas, CA 91302

A C C U S A T I O N

14 Physician's and Surgeon's Certificate
Number A 113944,

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Kimberly Kirchmeyer (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 (Board).

22 2. On September 8, 2010, the Medical Board issued Physician's and Surgeon's
23 Certificate Number A 113944 to Brian Joseph Cassmassi, M.D. (Respondent). Said Certificate
24 was in full force and effect at all times relevant to the charges brought herein, except when his
25 license was restricted pursuant to a Penal Code 23 order, and will expire on April 30, 2020, unless
26 renewed.

27 3. On October 20, 2016, Petitioner's license was restricted, pursuant to a Penal Code
28 section 23 order, in that he shall have no contact with patients without a licensed medical provider

1 present (e.g., a nurse, mental health worker or clinical partner).

2 **JURISDICTION**

3 4. This Accusation is brought before the Board under the authority of the following
4 laws. All section references are to the Business and Professions Code unless otherwise indicated.

5 5. Section 2004 of the Code provides, in pertinent part:

6 “The board shall have the responsibility for the following:

7 “(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
8 Act.

9 “(b) The administration and hearing of disciplinary actions.

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

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

14 “(e) . . . (i).”

15 6. Section 2227 of the Code provides that a licensee who is found guilty under the
16 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
17 one year, placed on probation and required to pay the costs of probation monitoring, or such other
18 action taken in relation to discipline as the Board deems proper.

19 7. Section 2236 of the Code provides, in pertinent part:

20 “(a) The conviction of any offense substantially related to the qualifications, functions, or
21 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
22 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
23 evidence only of the fact that the conviction occurred.

24 “(b)”

25 “(c) The division may inquire into the circumstances surrounding the commission of
26 a crime in order to fix the degree of discipline or to determine if the conviction is of an offense
27 substantially related to the qualifications, functions, or duties of a physician and surgeon.

28 “(d) A . . . plea of nolo contendere is deemed to be a conviction within the meaning of this

1 section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that
2 the conviction occurred."

3 8. Section 726, subdivision (a), of the Code provides that the commission of any act of
4 sexual misconduct with a patient constitutes unprofessional conduct and grounds for disciplinary
5 action for any person licensed under this or under any initiative act referred to in this division.

6 9. California Code of Regulations, Title 16, section 1360, provides, in pertinent part:

7 "For the purposes of . . . suspension or revocation of a license, certificate . . . , a crime or act
8 shall be considered to be substantially related to the qualifications, functions or duties of a person
9 holding a license, certificate . . . under the Medical Practice Act if to a substantial degree it
10 evidences present or potential unfitness of a person holding a license, certificate . . . to perform
11 the functions authorized by the license, certificate . . . in a manner consistent with the public
12 health, safety or welfare. Such crimes or acts shall include but not be limited to the following:
13 Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation
14 of, or conspiring to violate any provision of the Medical Practice Act."

15 10. Section 490 of the Code provides, in pertinent part:

16 "(a) In addition to any other action that a board is permitted to take against a licensee, a
17 board may suspend or revoke a license on the ground that the licensee has been convicted of a
18 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
19 or profession for which the license was issued.

20 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
21 discipline a licensee for conviction of a crime that is independent of the authority granted under
22 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
23 of the business or profession for which the licensee's license was issued.

24 "(c) A conviction within the meaning of this section means . . . a conviction following a
25 plea of nolo contendere. Any action that a board is permitted to take following the establishment
26 of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction
27 has been affirmed on appeal, or when an order granting probation is made suspending the
28 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4

1 of the Penal Code.

2 "(d)"

3 11. Section 493 of the Code provides, in pertinent part: "Notwithstanding any other
4 provision of law, in a proceeding conducted by a board within the department . . . to suspend or
5 revoke a license or otherwise take disciplinary action against a person who holds a license, upon
6 the ground that the . . . licensee has been convicted of a crime substantially related to the
7 qualifications, functions, and duties of the licensee in question, the record of conviction of the
8 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
9 and the board may inquire into the circumstances surrounding the commission of the crime in
10 order to fix the degree of discipline or to determine if the conviction is substantially related to the
11 qualifications, functions, and duties of the licensee in question.

12 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
13 'registration.'"

14 **PENAL CODE**

15 12. Penal Code section 23 provides, in pertinent part, that in any criminal proceeding
16 against a person who has been issued a license to engage in a profession by a state agency, such
17 agency which issued the license may voluntarily appear to furnish pertinent information, make
18 recommendations regarding specific conditions of probation necessary to promote the interests of
19 justice and protect the interests of the public, if the crime charged is substantially related to the
20 qualifications, functions, or duties of a licensee.

21 13. Penal Code section 314, subdivision (1) provides that every person who willfully and
22 lewdly exposes his private parts in any place where there are present other persons to be offended
23 or annoyed thereby is guilty of lewd or obscene conduct.

24 14. Penal Code section 647, subdivision (a), provides that every person who engages in
25 lewd or dissolute conduct in any public place or in any place open to the public or exposed to
26 public view, is guilty of disorderly conduct, a misdemeanor.

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Crime Substantially Related)**

3 15. Respondent Brian Joseph Cassmassi, M.D. is subject to disciplinary action under
4 Code sections 2236 and 490, and California Code of Regulations, Title 16, section 1360, in that
5 he was convicted of lewd disorderly conduct, in violation of Penal Code section 647, subdivision
6 (a), a crime substantially related to the qualifications, functions, and duties of a physician and
7 surgeon. The circumstances are as follows:

8 16. On or about June 29, 2016, a criminal complaint was filed in the Los Angeles
9 Superior court entitled *The People of the State of California v. Brian Joseph Cassmassi*, bearing
10 case number 6AR11381, charging Respondent with one count of Indecent Exposure in violation
11 of Penal Code section 314, subdivision (I). The circumstances are as follows:

12 (a). In and about October 2015, T.C., a male patient, saw Respondent for a
13 psychotherapy visit and the management of his medications. During the visit, Respondent
14 showed the patient gay pornography on his laptop computer, exposed his penis and began
15 masturbating himself in front of the patient.

16 17. On or about October 20, 2016, the criminal court ordered that Petitioner's license be
17 restricted, pursuant to Penal Code section 23, in that he shall have no contact with patients
18 without a licensed medical provider present (e.g., a nurse, mental health worker or clinical
19 partner).

20 18. On December 5, 2016, upon the People's motion, the court amended the complaint by
21 interlineation to add Count 2, a violation of Penal Code section 647, subdivision (a), disorderly
22 conduct. Respondent entered a plea of nolo contendere to Count 2. The court ordered him to be
23 placed on summary probation for thirty-six months, stay away from and have no contact with any
24 male patient without a medical professional chaperone for the full term of his probation, complete
25 a 12-month continuous sexual compulsive counseling, one session per week, and obey all laws,
26 among other things. The court, on the oral motion of the People, dismissed Count 1 in the
27 furtherance of justice.

28 19. In an interview with the Board, Respondent admitted that he showed the patient gay

1 pornography, exposed his penis and began masturbating himself in front of the patient during the
2 office visit.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Sexual Misconduct)**

5 20. Respondent Brian Joseph Cassmassi, M.D. is subject to disciplinary action under
6 section 726 in that he exposed his penis and began masturbating himself in front of a patient
7 during a psychotherapy visit. The circumstances are as follows:

8 21. Paragraphs 16 through 19, inclusive, above are incorporated herein by reference as if
9 fully set forth.

10 **PRAYER**

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

13 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 113944,
14 issued to Brian Joseph Cassmassi, M.D.;

15 2. Revoking, suspending or denying approval of his authority to supervise physician
16 assistants and advanced practice nurses;

17 3. If placed on probation, ordering him to pay the Board the costs of probation
18 monitoring; and

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

20
21 DATED: March 7, 2018


22 KIMBERLY KIRCHMEYER
23 Executive Director
24 Medical Board of California
25 Department of Consumer Affairs
26 State of California

27 *Complainant*

28 LA2018600141
52808036.docx