

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

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


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



---

IRA LUBELL, M.D.  
Chairperson Panel A

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

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

**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 1 or 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 1 or 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 1 or 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	<hr/> \$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

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 GAIL M. HEPPELL, Supervising  
Deputy Attorney General  
3 FRED A. SLIMP II  
Deputy Attorney General  
4 1300 I Street, Suite 125  
P. O. Box 944255  
5 Sacramento, CA 94244-2550  
Telephone: (916) 324-7861

**FILED**  
**STATE OF CALIFORNIA**  
**MEDICAL BOARD OF CALIFORNIA**  
SACRAMENTO *January 6* 19 *98*  
BY *[Signature]* ANALYST

6 Attorneys for Complainant  
7

8 **BEFORE THE**  
9 **DIVISION OF MEDICAL QUALITY**  
10 **MEDICAL BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation ) Case No. 02-96-63666  
14 Against: )  
15 **TED HAJIME KOBASHIGAWA, M.D.** ) **ACCUSATION**  
16 7275 E. Southgate Drive, Ste. 107 )  
17 Sacramento, CA 95823 )  
18 Physician's and Surgeon's )  
19 Certificate No. A-39352, )  
20 Respondent. )

21 The Complainant alleges:

22 **PARTIES**

- 23 1. Complainant, Ronald Joseph, is the Executive  
24 Director of the Medical Board of California (hereinafter the  
25 "Board") and brings this accusation solely in his official  
26 capacity.  
27 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

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

4 **JURISDICTION**

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

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

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

19 "(b) Gross negligence.

20 "(c) Repeated negligent acts.

21 "(d) Incompetence.

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

26 C. Section 2236(a) of the Code provides that conviction  
27

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

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

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

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

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

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

27



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

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

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

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

25 M. Section 16.01(b) of the FY97-98 Budget Act of the  
26 State of California provides that no funds appropriated may  
27

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

11 4. Respondent is guilty of unprofessional conduct  
12 pursuant to Code sections 2234(b), 2234(c), 2234(d), 2234(e),  
13 2236(a), 2238, 2242, 2261, and 2262 as more specifically set forth  
14 hereinbelow.

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

18 **"Patient" Tauch S [REDACTED]**

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

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

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

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

13           8. On or about January 17, 1995, respondent prescribed  
14 flurbiprofen for arthritis, meclizine for dizziness, tylenol for  
15 pain, and imipramine for depression for agent 1. Agent 1 was not  
16 present at respondent's offices and was not seen by him on that  
17 date. Agent 1 was not suffering from any of the conditions for  
18 which the prescribed medications are indicated. Respondent falsely  
19 and fraudulently billed Medi-Cal using procedure code 90862,  
20 pharmacologic management, for care provided to agent 1 on January  
21 17, 1995, even though agent 1 was not present in respondent's  
22 office and was not seen or examined by him on that date.

23           9. On or about February 24, 1995, respondent prescribed  
24 flurbiprofen for arthritis, meclizine for dizziness, tylenol for  
25 pain, and imipramine for depression for agent 1. Agent 1 was not  
26 present at respondent's offices and was not seen by him on that  
27

1 date. Agent 1 was not suffering from any of the conditions for  
2 which the prescribed medications are indicated. Respondent falsely  
3 and fraudulently billed Medi-Cal using procedure code 90862,  
4 pharmacologic management, for care provided to agent 1 on February  
5 24,, 1995, even though agent 1 was not present in respondent's  
6 office and was not seen or examined by him on that date.

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

15           11. Agent 1 responded "Fine, thank you," to respondent's  
16 question as to her health. When respondent asked whether agent 1  
17 was tired, agent 1 replied, "Just a little bit." When agent 1  
18 further informed respondent that she desired more medication to  
19 send to Cambodia, respondent informed agent 1 that if her intent  
20 was to divert medication received from respondent she should not  
21 tell respondent of her intent. Agent 1 then told respondent "I  
22 won't tell you then." Respondent nevertheless prescribed promethaz  
23 sp, ibuprofen, tylenol and imipramine to agent 1 without a good  
24 faith examination or medical indication therefor, and falsely and  
25 fraudulently coded the visit for Medi-Cal billing purposes as  
26 90862, pharmacologic management, and falsely and fraudulently

27

1 billed Medi-Cal thereon.

2           12. On or about April 20, 1995, respondent prescribed  
3 acetaminophen with codeine, a controlled substance, for pain and  
4 imipramine for depression for agent 1. Agent 1 was not present at  
5 respondent's offices and was not seen by him on that date. Agent 1  
6 was not suffering from any of the conditions for which the  
7 prescribed medications are indicated, and said prescriptions were  
8 without legitimate medical purpose. Respondent falsely and  
9 fraudulently billed Medi-Cal using procedure code 90862,  
10 pharmacologic management, for care provided to agent 1 on April 20,  
11 1995, even though agent 1 was not present in respondent's office  
12 and was not seen or examined by him on that date.

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

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

27

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

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

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

23 17. On or about July 26, 1995, respondent prepared and  
24 mailed the following false and fraudulent statement concerning the  
25

---

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

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

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

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

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

26 20. Respondent falsely and fraudulently entered in the  
27 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 1 are grossly and egregiously inadequate. Specifically, agent 1's  
2 treatment records lack:

- 3 (a) a medical history;
- 4 (b) a pre-interview symptom check-off;
- 5 (c) physical examination results, past or current;
- 6 (d) a psychiatric history;
- 7 (e) a drug or substance abuse history;
- 8 (f) a history of prior medications with effects and  
9 results;
- 10 (g) a drug allergy indication;
- 11 (h) a history of past pregnancies and current  
12 pregnancy status;
- 13 (i) adequate clinic visit records containing:
  - 14 (A) proper SOAP notes;
  - 15 (B) overall status report;
  - 16 (C) mental status report;
  - 17 (D) reports of necessary lab work;
- 18 (j) proper prescriptions containing:
  - 19 (A) legible, complete prescriptions;
  - 20 (B) appropriate use of more than one  
21 antidepressant;
  - 22 (C) appropriate use of adequate therapeutic  
23 dosages;
  - 24 (D) appropriate consideration or use of  
25 antipsychotics for code billed;
  - 26 (E) appropriate indications for non-psychiatric  
27



1 drugs prescribed;

2 (k) some basis for diagnosis of depression;

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

4 (m) justification for statements in report provided

5 to Department of Social Services

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

8 "Patient" Sam S [REDACTED]

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

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

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

27

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

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

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

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

27

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

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

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

25           31. On or about April 20, 1995, agent 2 returned to  
26 respondent's offices for further treatment. Agent 2 was wearing an  
27

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

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

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

25           34. On or about June 14, 1995, agent 2 returned to  
26 respondent's offices for further treatment. Agent 2 was wearing an  
27

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

7           35. After entering respondent's office, agent 2  
8 responded "Good," to respondent's question as to how he felt. Agent  
9 2 stated that the medications previously provided had "helped."  
10 Agent 2 also replied that the medications previously provided to  
11 his "sister," i.e., agent 1, had also "helped" her as well.  
12 Respondent then prescribed APAP with codeine, a controlled  
13 substance, imipramine, indomethacin, tylenol and promethazine syrup  
14 to agent 2 without a good faith examination or medical indication  
15 therefor and without a legitimate medical purpose. For purposes of  
16 Medi-Cal billing, respondent falsely and fraudulently coded his  
17 diagnosis of agent 2's medical condition as "major depression"  
18 without medical indication therefor, and falsely and fraudulently  
19 billed Medi-Cal thereon. Agent 2 obtained the prescriptions for  
20 agent 1 indicated in paragraph 14, above.

21           36. On or about July 20, 1995, agent 2, accompanied by  
22 agents 1 and 3<sup>2</sup>, returned to respondent's offices for further  
23 treatment. Agent 2 was wearing an electronic surveillance and  
24 recording device and his conversations and actions were monitored  
25

---

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

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

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

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

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

26           40. Prior to the departure of agents 1, 2, and 3 from  
27

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

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

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

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

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

26 44. Upon agent 2's entering the offices of respondent,  
27

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

11           45. Thereafter, when agent 2 said he did not want to see  
12 respondent, he merely wanted to obtain further medication,  
13 respondent's office staff went into respondent's office and  
14 returned with three prescriptions prepared by respondent for agents  
15 1, 2, and 3. Upon agent 2's further indication that he wanted a  
16 medication containing codeine, a controlled substance, respondent's  
17 staff again entered respondent's office and thereafter returned  
18 with a prescription prepared by respondent for agent 2 for tylenol,  
19 acetaminophen with codeine, a controlled substance, klonopin and  
20 imipramine. The prescription was written by respondent without a  
21 good faith examination or medical indication therefor and without  
22 legitimate medical purpose. For purposes of Medi-Cal billing,  
23 respondent falsely and fraudulently coded his diagnosis of agent  
24 2's medical condition as "major depression" without medical  
25 indication therefor, and falsely and fraudulently billed Medi-Cal  
26 thereon.

27



1           46. Respondent falsely and fraudulently entered in the  
2 medical records of agent 2 that he was seen in his offices on March  
3 30, 1995, and August 29, 1995, and falsely and fraudulently billed  
4 Medi-Cal for treatment provided for him on those false and  
5 fraudulent dates.

6           47. Respondent's psychiatric treatment records of agent  
7 2 are grossly and egregiously inadequate. Specifically, agent 2's  
8 treatment records lack:

- 9                   (a) a medical history;
- 10                   (b) a pre-interview symptom check-off;
- 11                   (c) physical examination results, past or current;
- 12                   (d) a psychiatric history;
- 13                   (e) a drug or substance abuse history;
- 14                   (f) a history of prior medications with effects and  
15 results;
- 16                   (g) a drug allergy indication;
- 17                   (h) adequate clinic visit records containing:
  - 18                           (A) proper SOAP notes;
  - 19                           (B) overall status report;
  - 20                           (C) mental status report;
  - 21                           (D) reports of necessary lab work;
- 22                   (j) proper prescriptions containing:
  - 23                           (A) legible, complete prescriptions;
  - 24                           (B) appropriate use of more than one  
25 antidepressant;
  - 26                           (C) appropriate use of adequate therapeutic

1 dosages;

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

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

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

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

10 (k) some basis for diagnosis of depression;

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

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

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

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

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

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

25 ///

26 ///

27 ///

28



1 respondent.

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

11           56. After being asked by respondent again what type of  
12 medicine she wanted, agent 3 stated "Sleeping medicine." Respondent  
13 then prescribed agent 3 imipramine without a good faith examination  
14 or medical indication therefor. For purposes of Medi-Cal billing,  
15 respondent falsely and fraudulently coded his diagnosis of agent  
16 3's medical condition as "major depression" without medical  
17 indication therefor, and falsely and fraudulently billed Medi-Cal  
18 thereon.

19           57. On or about August 29, 1995, respondent prescribed  
20 antacid tab plus, imipramine and ibuprofen for agent 3. Agent 3 was  
21 not present at respondent's offices and was not seen by him on that  
22 date. Agent 3 was not suffering from any of the conditions for  
23 which the prescribed medications are indicated. Respondent falsely  
24 and fraudulently billed Medi-Cal using procedure code 90862,  
25 pharmacologic management, for care provided to agent 3 on August  
26 29, 1995, even though agent 3 was not present in respondent's  
27

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

2 58. Respondent's conduct of creating false and  
3 fraudulent billing codes and falsely and fraudulently billing Medi-  
4 Cal for services as described by those false and fraudulent codes  
5 as set forth in paragraphs 7, 8, 9, 11, 12, 13, 14, 16, 19, 25, 29,  
6 30, 32, 33, 35, 39, 45, 56, or 57 constitutes dishonesty within the  
7 meaning of Code section 2234(e).

8 **FIFTH CAUSE FOR DISCIPLINE**

(Dishonesty)

9 [Bus. & Prof. Code § 2234(e)]

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

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

18 **SIXTH CAUSE FOR DISCIPLINE**

(Dishonesty)

19 [Bus. & Prof. Code § 2234(e)]

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

23 62. Respondent's conduct in entering false and  
24 fraudulent dates of service in patient records for the purpose of  
25 facilitating false and fraudulent Medi-Cal billings as set forth in  
26 paragraph 20 or paragraph 46 constitutes dishonesty within the  
27

1 meaning of Code section 2234(e).

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

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

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

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

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

21 66. Respondent's conduct in issuing prescriptions  
22 without a prior good faith examination and medical indication  
23 therefor as set forth in paragraphs 7, 8, 9, 12, 14, 16, 19, 25,  
24 29, 30, 32, 35, 39, 45, 56, or 57 constitutes unprofessional  
25 conduct within the meaning of Code section 2242.

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

29 67. Complainant realleges paragraphs 5-48, above and  
30 incorporates them herein by reference as if fully set forth at this  
31

1 point.

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

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

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

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

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

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

1           72. Respondent's conduct of creating false and  
2 fraudulent billing codes and falsely and fraudulently billing Medi-  
3 Cal for services as described by those false and fraudulent codes  
4 as set forth in paragraphs 7, 8, 9, 11, 12, 13, 14, 16, 19, 25, 29,  
5 30, 32, 33, 35, 39, 45, 56, or 57 constitutes the knowing making of  
6 a document related to the practice of medicine that falsely  
7 represents the existence of a state of facts and therefore also  
8 constitutes unprofessional conduct within the meaning of Code  
9 section 2261.

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

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

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

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

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

77. Respondent's conduct in entering false and



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

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

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

13 79. Respondent's conduct of creating false and  
14 fraudulent billing codes and falsely and fraudulently billing Medi-  
15 Cal for services as described by those false and fraudulent codes  
16 as set forth in paragraphs 7, 8, 9, 11, 12, 13, 14, 16, 19, 25, 29,  
17 30, 32, 33, 35, 39, 45, 56, or 57 constitutes the creation of false  
18 medical records with fraudulent intent, and therefore also  
19 constitutes unprofessional conduct within the meaning of Code  
20 section 2262.

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

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


27 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.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

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

forms\accuse [115 rev]