

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

<b>In the Matter of the Accusation</b>	)	
<b>Against:</b>	)	
	)	
	)	
<b>BYRON WILLIAM KILGORE, M.D.)</b>	)	<b>Case No. 03-2012-221148</b>
	)	
<b>Physician's and Surgeon's</b>	)	
<b>Certificate No. C-31188</b>	)	
	)	
<b>Respondent</b>	)	
_____	)	


**DECISION**

**The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on May 28, 2013.**

**IT IS SO ORDERED May 21, 2013.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
\_\_\_\_\_  
**Linda K. Whitney**  
**Executive Director**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSE R. GUERRERO  
Supervising Deputy Attorney General  
3 ESTHER H. LA  
Deputy Attorney General  
4 State Bar No. 160706  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
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6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:  
11 **Byron William Kilgore, M.D.**  
12 Physician's and Surgeon's Certificate  
13 No. C31188  
14 Respondent.

Case No. 03-2012-221148

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

15  
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
17 proceeding that the following matters are true:

18 PARTIES

19 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of  
20 California. She brought this action solely in her official capacity and is represented in this matter  
21 by Kamala D. Harris, Attorney General of the State of California, by Esther H. La, Deputy  
22 Attorney General.

23 2. Byron William Kilgore, M.D. (Respondent) is represented in this proceeding by  
24 attorney Brock Phillips, whose address is Pacific West Law Group, LLP, 655 Redwood Highway,  
25 Suite 250, Mill Valley, CA 94941

26 3. On or about May 21, 1969, the Medical Board of California issued Physician's and  
27 Surgeon's Certificate No. C31188 to Respondent. The Physician's and Surgeon's Certificate was  
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1 in full force and effect at all times relevant to the charges brought in Accusation No. 03-2012-  
2 221148 and will expire on December 31, 2013, unless renewed.

3 JURISDICTION

4 4. Accusation No. 03-2012-221148 was filed before the Medical Board of California  
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The  
6 Accusation and all other statutorily required documents were properly served on Respondent on  
7 October 2, 2012. Respondent filed a Notice of Defense contesting the Accusation. A copy of  
8 Accusation No. 03-2012-221148 is attached as Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the  
11 charges and allegations in Accusation No. 03-2012-221148. Respondent also has carefully read,  
12 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License  
13 and Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at  
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
18 the attendance of witnesses and the production of documents; the right to reconsideration and  
19 court review of an adverse decision; and all other rights accorded by the California  
20 Administrative Procedure Act and other applicable laws.

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

23 CULPABILITY

24 8. Respondent admits the truth of the charges and allegations in Accusation No. 03-  
25 2012-221148, agrees that these admissions could establish a factual basis for the discipline set  
26 forth in this Stipulation, and hereby surrenders his Physician's and Surgeon's Certificate No.  
27 C31188 for the Board's formal acceptance.



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2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If he ever applies for licensure or petitions for reinstatement in the State of California, Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 03-2012-221148 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

5. If Respondent should 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. 03-2012-221148 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.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Brock Phillips. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 3 May 13

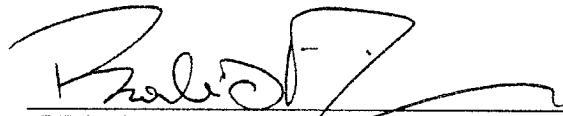
*Byron William Kilgore MD*

BYRON WILLIAM KILGORE, M.D.  
Respondent

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I have read and fully discussed with Respondent Byron William Kilgore, 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: 3 May 2013

  
BROCK PHILLIPS  
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:

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
JOSE R. GUERRERO  
Supervising Deputy Attorney General

ESTHER H. LA  
Deputy Attorney General  
*Attorneys for Complainant*

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1 I have read and fully discussed with Respondent Byron William Kilgore, M.D. the terms  
2 and conditions and other matters contained in this Stipulated Surrender of License and Order. I  
3 approve its form and content.

4 DATED: \_\_\_\_\_

BROCK PHILLIPS  
Attorney for Respondent

6  
7 ENDORSEMENT

8 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
9 for consideration by the Medical Board of California of the Department of Consumer Affairs.

10 Dated: 5/3/2013

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JOSE R. GUERRERO  
Supervising Deputy Attorney General

13  
14 

15 ESTHER H. LA  
16 Deputy Attorney General  
17 *Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 03-2012-221148**



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*Attorneys for Complainant*

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

In the Matter of the Accusation Against:  
**BYRON WILLIAM KILGORE, M.D.**  
3020 Fillmore Street  
San Francisco, CA 94123  
  
Physician's and Surgeon's Certificate  
No. C31188  
  
Respondent.

Case No. 03-2012-221148

**A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board)<sup>1</sup>, Department of Consumer Affairs.
2. On or about May 21, 1969, the Medical Board of California issued Physician's and Surgeon's Certificate Number C31188 to Byron William Kilgore, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2013, unless renewed.

<sup>1</sup> The term "Board" means the Medical Board of California; "Division of Medical Quality" shall also be deemed to refer to the Board.

JURISDICTION

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2       3.     This Accusation is brought before the Medical Board of California (Board),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code unless otherwise indicated.

5       4.     Section 2004 of the Code states, in relevant 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) Reviewing the quality of medical practice carried out by physician and surgeon  
15 certificate holders under the jurisdiction of the board.”

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

20       6.     Section 2234 of the Code states, in relevant part:

21       “The Division of Medical Quality shall take action against any licensee who is charged with  
22 unprofessional conduct. In addition to other provisions of this article, unprofessional conduct  
23 includes, but is not limited to, the following:

24       “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
25 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical  
26 Practice Act].

27       “(b) Gross negligence.”

28

1           7.     Section 726 of the Code states in pertinent part:

2           “The commission of any act of sexual abuse, misconduct, or relations with a patient, client,  
3 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person  
4 licensed under this division, under any initiative act referred to in this division and under Chapter  
5 17 (commencing with Section 9000) of Division 3.”

6           8.     Section 729 of the Code provides, in pertinent part, that any physician and surgeon or  
7 psychotherapist, who engages in any act of sexual intercourse or sexual contact with a patient is  
8 guilty of sexual exploitation.

9           9.     The American Psychiatric Association’s Principles of Medical Ethics with  
10 Annotations Especially Applicable to Psychiatry (2009 Revision) provides, in the annotations to  
11 Section 2 as follows:

12                     “The requirement that the physician conduct himself/herself with propriety in his  
13 or her profession and in all the actions of his or her life is especially important in the case of  
14 the psychiatrist because the patient tends to model his or her behavior after that of his or her  
15 psychiatrist by identification. Further, the necessary intensity of the treatment relationship  
16 may tend to activate sexual and other needs and fantasies on the part of both patient and  
17 psychiatrist, while weakening the objectivity necessary for control. Additionally, the  
18 inherent inequality in the doctor-patient relationship may lead to exploitation of the patient.  
19 **Sexual activity with a current or former patient is unethical.**” (Emphasis added.)

17                                     FIRST CAUSE FOR DISCIPLINE

18                                     (Unprofessional Conduct: Sexual Misconduct)

19           10.    Respondent is subject to disciplinary action for unprofessional conduct under Code  
20 section 726 and/or 729 in that he engaged in a sexual relationship with a patient. The  
21 circumstances are as follows:

22           11.    In or around February 2012, the Board received a complaint from M.V.<sup>2</sup> who alleged  
23 that Respondent, her psychiatrist, had engaged in sexual misconduct with her.

24           12.    M.V. first saw Respondent for psychiatric treatment in or around 1974, and continued  
25 to receive psychiatric treatment from Respondent intermittently at various time intervals,  
26

27 \_\_\_\_\_  
28           <sup>2</sup> The patient’s name is abbreviated to protect her privacy.

1 including between 2001 and 2009. M.V. reported a history of physical and verbal abuse from her  
2 father and, as a result, being susceptible to feelings of rejection.

3 13. In or about 2008, patient's treatment sessions with Respondent became more  
4 flirtatious, and Respondent would sometimes hug her at the end of their sessions.

5 14. In or about May 2009, Respondent engaged in a sexual encounter, including sexual  
6 intercourse, with the patient at a hotel close to his office. They went to dinner afterwards at a  
7 nearby restaurant. Over the next several weeks, Respondent and the patient engaged in two or  
8 three further sexual encounters at Respondent's office. Their sexual relationship then ended, and  
9 the patient stopped seeing Respondent for psychiatric treatment.

10 15. The patient reported developing severe bouts of depression and feelings of low self-  
11 worth as a result of her sexual encounters with Respondent.

12 16. The patient began seeing a new psychiatrist in or about November 2009.

13 SECOND CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct: Gross Negligence)

15 17. Paragraphs 11 through 16 are incorporated herein by reference as if fully set forth.

16 18. Respondent is subject to disciplinary action for unprofessional conduct under section  
17 Code section 2234(b) in that he engaged in a sexual relationship with a patient which is an  
18 extreme departure from the standard of care.

19 PRAYER

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

22 1. Revoking or suspending Physician's and Surgeon's Certificate Number C31188,  
23 issued to Byron William Kilgore, M.D.;

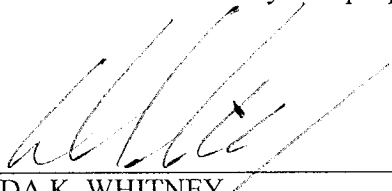
24 2. Revoking, suspending or denying approval of Byron William Kilgore, M.D.'s  
25 authority to supervise physician assistants, pursuant to section 3527 of the Code;

26 3. Ordering Byron William Kilgore, M.D., if placed on probation, to pay the Medical  
27 Board of California the costs of probation monitoring; and  
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4. Taking such other and further action as deemed necessary and proper.

DATED: October 2, 2012



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LINDA K. WHITNEY  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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