

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

In the Matter of the Accusation )  
Against: )

BRIAN JOSEPH CASSMASSI, M.D. )

Case No. 8002015017882

Physician's and Surgeon's )  
Certificate No. A113944, )

OAH No. 2018040106

Respondent )  
\_\_\_\_\_ )

DECISION

The attached Proposed Decision 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 November 21, 2018.

IT IS SO ORDERED October 25, 2018.

MEDICAL BOARD OF CALIFORNIA

By: 

Ronald H. Lewis, M.D., Chair  
Panel A

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

In the Matter of the Accusation Against:

BRIAN JOSEPH CASSMASSI, M.D.

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

Respondent.

Case No. 800-2015-017882

OAH No. 2018040106

**PROPOSED DECISION**

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on September 5-6, 2018.

Robert McKim Bell, Supervising Deputy Attorney General, represented complainant Kimberly Kirchmeyer, Executive Director, Medical Board of California (Board), Department of Consumer Affairs.

Benjamin J. Fenton, Esq., Fenton Law Group LLP, represented respondent Brian Joseph Cassmassi, M.D.

The matter was submitted on September 6, 2018.

**SUMMARY**

Complainant requests that the Board revoke respondent's physician's and surgeon's certificate due to alleged sexual misconduct with a patient and a resulting criminal conviction. Respondent admits the allegations but asserts that a stayed revocation with probation is the proper discipline. Respondent's assertion is unpersuasive, and his certificate will be revoked.

## FACTUAL FINDINGS

### *Jurisdictional Facts*

1. On September 8, 2010, the Board issued Physician's and Surgeon's Certificate Number A 113944 to respondent. The certificate will expire on April 30, 2020, unless renewed.
2. On March 7, 2018, complainant filed an Accusation in her official capacity requesting disciplinary action against respondent's certificate, alleging he engaged in sexual misconduct with a patient that resulted in a misdemeanor criminal conviction against him.
3. Respondent submitted a Notice of Defense, dated March 22, 2018.

### *Respondent's Background*

4. Respondent is a 35-year-old psychiatrist with no prior disciplinary history. He graduated from the Keck School of Medicine of the University of Southern California in 2009, and was then a resident in adult psychiatry for three years at Cedars-Sinai Medical Center (Cedars-Sinai) in Los Angeles, California. In 2012, Cedars-Sinai announced it was ending its program for psychiatric residents, prompting respondent to transfer to the Yale School of Medicine in New Haven, Connecticut, to complete his final year of residency in adult psychiatry.
5. In July 2013, respondent began a six-month psychiatry fellowship with the Greater Los Angeles VA Department of Psychiatry. He then started working for IPC Healthcare, which contracted to provide psychiatric services for Glendale Memorial Hospital in Glendale, California. Respondent worked in the hospital's Behavioral Health Unit until July 2015, when IPC Healthcare's contract with the hospital ended. Respondent then began working at Genen Group, an outpatient psychiatric group in West Hollywood, California, primarily treating adult patients with anxiety, depression, and attention deficit hyperactivity disorder. Respondent also worked as a consulting psychiatrist at Cedars-Sinai from early 2014 until late 2016.

### *Sexual Conduct with Patient T.C.*

6. In September 2015, Lawrence Genen, M.D., of Genen Group asked respondent and another psychiatrist to cover appointments for some of Dr. Genen's patients for the month. As part of that arrangement, respondent saw patient T.C., a 28-year-old man, for two 40-minute sessions. At the first appointment in mid-September 2015, respondent reviewed T.C.'s medications, discussed stressors in T.C.'s life, and prescribed Wellbutrin, an anti-depressant, as an additional medication. At the time, T.C. was also taking Adderall for attention deficit hyperactivity disorder.

7. T.C. returned for the second appointment in early October 2015 and respondent asked T.C. if he had noticed any effects from taking both Wellbutrin and Adderall. T.C. replied he was becoming sexually aroused more easily, and respondent asked questions about when that was happening. Respondent also questioned T.C. about his sexual preferences and preferred sexual positions, which T.C. found odd.

8. Respondent then asked T.C. what type of pornography he liked to watch. T.C. described what he liked and referenced a particular male actor in gay pornographic videos. Searching the files on his laptop computer, respondent found a pornographic video file in which that actor appeared. Respondent already had the video saved on his laptop, which was the same computer he was using to take notes of the session.

9. Respondent began playing the video and turned the laptop around so the screen faced T.C. While the video played, respondent began touching himself, exposed his penis, and started masturbating in front of T.C. Respondent then came over to the loveseat where T.C. was sitting, sat down next to him, and kept masturbating while watching the video until respondent ejaculated. Respondent would later tell Brian P. Jacks, M.D., respondent's testifying psychiatrist, that he also helped T.C. masturbate. By respondent's own account, T.C. looked "surprised" and "stunned" after the encounter.

10. Two weeks later, T.C. returned for an appointment with Dr. Genen. After that session, T.C. was using the office restroom when respondent entered, looked at T.C., and asked if there was anything respondent needed to be concerned about, or words to that effect. T.C. replied there was not in order to get respondent to leave, and respondent left without using the restroom. T.C. then told Dr. Genen about the prior appointment with respondent, and complained to the Board about it a few weeks later.

### *Investigation and Criminal Conviction*

11. The Board assigned Investigator Ken Buscarino to investigate T.C.'s complaint. Investigator Buscarino interviewed T.C. and respondent's colleagues at the Genen Group, and then presented the case to the Los Angeles District Attorney's Office for possible criminal prosecution. On June 29, 2016, the Los Angeles County District Attorney's Office filed a criminal complaint against respondent in the Superior Court of California, County of Los Angeles, for misdemeanor indecent exposure under Penal Code section 314. (*People v. Cassmassi*, Super. Court of Cal., County of Los Angeles, Case No. 6AR11381.) About four months later on October 28, 2016, the criminal court restricted respondent's license while the case was pending to allow no contact with patients without another licensed medical provider present. (See Pen. Code, § 23.)

12. On December 5, 2016, on the People's motion, the court ordered the criminal complaint amended to include an additional charge of misdemeanor lewd conduct. (See Pen. Code, § 647, subd. (a).) Respondent pleaded nolo contendere to that charge and was convicted of it, after which the court suspended imposition of sentence and placed him on probation for 36 months conditioned on him seeing no male patients without a chaperone

during probation, completing 12 months of weekly sexual compulsive counseling with his existing therapist, and paying fines, fees, and assessments. At the People's request, the court dismissed the indecent exposure charge in the interest of justice. Respondent was not required to register as a sex offender.

### *Psychotherapy and Psychiatric Evaluations*

13. In August 2016, before respondent's conviction, he began weekly psychotherapy sessions with Justin Natoli, a licensed marriage and family therapist. Respondent continued those weekly sessions as a condition of his probation, with treatment goals of managing anxiety, understanding triggers related to sexual acting out behaviors, developing empathy for others and a better respect for professional boundaries, and managing the shame preventing respondent from obtaining support from others when needed. Respondent has now complied with the probation requirement of 12 months of weekly counseling sessions with Mr. Natoli, but still sees him for therapy about once every two weeks.

14. After respondent's conviction, respondent was also evaluated by Dr. Jacks on December 10, 2016, and again on October 7, 2017. Dr. Jacks administered the Minnesota Multiphasic Personality Inventory-2 to respondent during each evaluation, and also spoke to Mr. Natoli after the second evaluation. Dr. Jacks diagnosed respondent with dysthymia, with no personality developmental disorders or physical disorders, and attributed respondent's conduct to situational stress from a recent breakup, acting out impulsively, and inadequate training in countertransference. Countertransference refers to emotional feelings a doctor can develop for a patient, while transference refers to emotional feelings a patient can develop for a doctor.

15. In a report dated November 1, 2017, Dr. Jacks notably "d[id] not find that there is enough therapeutic work for [respondent] still to deal with his countertransference feelings." Dr. Jacks recommended weekly or biweekly additional counseling for those feelings with a "psychologically minded" therapist for about a year or until the therapist recommended ending the counseling, whichever was earlier.

### *Interview*

16. On October 24, 2017, respondent and his attorney met with Investigator Buscarino and another Board investigator in Glendale, California, for a recorded interview. A Deputy Attorney General from the Office of the Attorney General also participated by telephone. When asked if respondent exposed his penis and masturbated during the session with T.C., respondent replied "We both did" to each question. Respondent also admitted showing pornography to T.C. and described feeling guilt, shame, and remorse for his conduct.

### *Current Status*

17. Respondent remains on probation in his criminal case, which is his only criminal conviction. He currently works for Aligned Telehealth providing telepsychiatry to inmates in California correctional institutions. He started that job in March 2017, and it complies with his probation because the inmates have chaperones during the sessions, which respondent conducts remotely through his home computer. Respondent left the Genen Group shortly after the incident with T.C., and lost his other job at Cedars-Sinai in November 2016 after the criminal court restricted his license.

18. Respondent completed a two-part, 46-hour professional boundaries course in 2016 and a two-day medical ethics and professionalism course in February 2017, plus several follow-up sessions. He credits the professional boundaries course for helping him develop more empathy about what patients suffer when doctors violate boundaries, and for giving him a better understanding of transference and countertransference. He volunteers regularly at the Greater West Hollywood Food Coalition to serve food to the homeless, and has also volunteered at the Los Angeles Gay and Lesbian Center to help set up for events.

### *Testimony*

19. T.C. testified as to respondent's sexual conduct toward T.C., establishing that it made T.C. extremely uncomfortable and upset. T.C. also credibly described the interactions with respondent that preceded and followed the sexual conduct.

20. Respondent testified he was remorseful for his conduct with T.C., which he described as an aberration. He denied similar conduct with other patients, although admitting one earlier "dalliance" with a former patient after care ended. He testified he had a poor understanding of countertransference when he saw T.C. and was arguing with his boyfriend just before T.C.'s second appointment, which contributed to respondent's behavior. Respondent had noted T.C. was attractive at the first appointment and was looking forward to seeing him again after feeling sad and overwhelmed from the argument. Respondent also testified he disliked working at Genen Group, and now considers his conduct toward T.C. to have been a form of self-sabotage. Respondent further testified that his therapy and the professional boundaries course greatly increased his understanding of the negative impacts of such conduct on patients, and he feels like a different person now.

21. Mr. Natoli testified respondent has expressed remorse for his conduct and shown increasing empathy during therapy. Respondent has also expanded his inner circle of friends and the increased connectivity reduces the risk of similar sexual conduct or other impulsive acts in the future. However, Mr. Natoli testified he does not have enough information at this time to predict that risk. He recommends group therapy or a 12-step program for respondent in addition to individual therapy.

22. Dr. Jacks testified respondent did not have a sexual compulsivity issue, but did lack adequate training in transference and countertransference. The closure of the Cedars-

Sinai residency program during the third year of respondent's residency interrupted that training. Given the stress and impact of the criminal case and this case, Dr. Jacks sees no immediate danger of further sexual misconduct with patients, but does see a longer-term risk of recidivism without additional therapy. He recommends respondent receive about a year of weekly therapy from a psychoanalyst or someone else who deals with insight-oriented psychotherapy, and believes the chances are good respondent will not re-offend after that.

## LEGAL CONCLUSIONS

### *Legal Standards*

1. "The board shall take action against any licensee who is charged with unprofessional conduct." (Bus. & Prof. Code, § 2234.)<sup>1</sup> Unprofessional conduct includes "[t]he commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer . . ." (§ 726, subd. (a).) It also includes the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon. (§ 2236, subd. (a); see also § 490, subd. (a).) An offense is considered to be substantially related to the qualifications, functions or duties of a licensee "if to a substantial degree it evidences present or potential unfitness of [the licensee] . . . to perform the functions authorized by the license . . . in a manner consistent with the public health, safety or welfare." (Cal. Code Regs., tit. 16, § 1360.)

2. Complainant bears the burden of proving the alleged grounds for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence "requires a finding of high probability," and has been described as "requiring that the evidence be "so clear as to leave no substantial doubt"; "sufficiently strong to command the unhesitating assent of every reasonable mind." [Citation.]" (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

### *Discussion*

#### CAUSES FOR DISCIPLINE

3. Clear and convincing evidence established that respondent engaged in sexual misconduct with a patient. Respondent displayed pornography, exposed his penis, and masturbated during a psychiatric appointment with T.C., and also helped T.C. masturbate, according to respondent's statement to Dr. Jacks. (Factual Findings 6-10.) Respondent correctly concedes his sexual conduct toward T.C. was improper. Therefore, the Board may take disciplinary action against respondent for sexual misconduct under sections 726 and 2234.

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<sup>1</sup> Undesignated statutory references are to the Business and Professions Code.

4. Clear and convincing evidence also established that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a licensee. Respondent was convicted of misdemeanor lewd conduct based on his sexual conduct with a patient during a psychiatric appointment. (Factual Findings 11-12.) Respondent's commission of a crime during an appointment "evidences present or potential unfitness . . . to perform the functions authorized by the license . . . in a manner consistent with the public health, safety or welfare." (Cal. Code Regs., tit. 16, § 1360.) Therefore, the Board may also take disciplinary action against respondent for sexual misconduct under sections 490 and 2236.

#### LEVEL OF DISCIPLINE

5. With the evidence establishing the two causes for discipline alleged in the Accusation, the Board has discretion to determine the suitable discipline, "subject to the Legislative mandate that the Board's highest priority be protection of the public; and, secondarily, discipline should 'aid in the rehabilitation of the licensee.' (§ 2229, subs. (a) & (b).)" (*Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448.) In exercising its discretion, the Board shall consider the Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition/2016) (Guidelines) that it has adopted. (Cal. Code Regs., tit. 16, § 1361.) For sexual misconduct, the Guidelines recommend a minimum discipline of stayed revocation and seven years' probation. (Guidelines at p. 23.) For conviction of a crime occurring during patient care, the Guidelines recommend a minimum discipline of stayed revocation, a one-year suspension, and at least seven years' probation. (*Id.* at p. 25.) The maximum discipline for either form of unprofessional conduct is revocation of licensure. (*Id.* at pp. 23, 25.)

6. When considering the suspension or revocation of a license on the ground of a criminal conviction, the Board also considers specific rehabilitation criteria: "(a) The nature and severity of the act(s) or offense(s). [¶] (b) The total criminal record. [¶] (c) The time that has elapsed since commission of the act(s) or offense(s). [¶] (d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person. [¶] (e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code. [¶] (f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder." (Cal. Code of Regs., tit. 16, § 1360.1.) Here, respondent's conviction was for lewd conduct during patient care, making it particularly serious with respect to licensure. The conviction is respondent's total criminal record, and he committed the offense about three years ago. He has complied with his probation terms to date, but his probation is still ongoing. In addition, the conviction has not been dismissed under Penal Code section 1203.4.

7. Respondent's evidence of rehabilitation includes therapy, completion of professional boundaries and medical ethics courses, his testimony about a change in attitude, and continued practice under license restrictions without further incident. (Factual Findings 17-18, 20.) But Dr. Jacks also identified a long-term risk of recidivism without additional therapy. (Factual Finding 22.) Similarly, Mr. Natoli recommended additional group therapy



or a 12-step program, and testified he did not have enough information to predict the risk of further sexual misconduct. (Factual Finding 21.) This evidence indicates respondent is not yet rehabilitated and needs more therapy than he has received to date.

8. Respondent has not committed additional misconduct, but has also been subject to restrictions on his license since late October 2016 and criminal probation since early December 2016. Persons “are required to behave in exemplary fashion” while on probation, and therefore good behavior while on probation is generally accorded little weight. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Furthermore, respondent’s sexual conduct with T.C. was a serious breach of the duties of respect and care that all physicians owe to all patients. “[T]he more serious the misconduct and the bad character evidence, the stronger the applicant’s showing of rehabilitation must be. [Citations.]” (*Id.* at p. 1096.)

9. The doctor-patient relationship “is based on utmost trust and confidence in the doctor's honesty and integrity.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.) “There is no other profession in which one passes so completely within the power and control of another as does the medical patient. [Citation.]” (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578.) Respondent flagrantly abused that power and control over T.C. for respondent’s own sexual gratification. Without more evidence of rehabilitation, public protection requires outright revocation of respondent’s license, not just a stayed revocation and probation as respondent requests.

10. Respondent points to the criminal court’s probation terms as evidence that a stayed revocation with probation is sufficient, but those terms resulted from a nolo contendere plea, not an evidentiary hearing. The evidentiary hearing in this case established the details of respondent’s victimization of his patient and need for additional therapy to prevent recidivism. Those details indicate respondent’s continued practice presents an unacceptable risk to patients even with a license restriction prohibiting unsupervised contact with male patients, which the criminal court imposed. Respondent’s rehabilitation is not to the point where he can be trusted to abide by such a restriction during a seven-year or longer term of Board probation, which the Guidelines recommend as part of even the minimum level of discipline.

11. License revocation is a “drastic penalty” (*Cooper v. State Board of Medical Examiners* (1950) 35 Cal.2d 242, 252), but revocation for sexual misconduct with patients in care is within the Board’s discretion. (See, e.g., *Dresser v. Board of Medical Quality Assurance* (1982) 130 Cal.App.3d 506, 511 [affirming revocation of license of a psychologist for having sexual relations with two patients]; *Bernstein v. Board of Medical Examiners* (1962) 204 Cal.App.2d 378, 386 [affirming revocation of license of a psychiatrist who was convicted of statutory rape of a patient].) The evidence in this case warrants that result.

ORDER

Certificate No. A 113944 issued to respondent Brian Joseph Cassmassi is revoked pursuant to Legal Conclusions 1 through 11, separately and for each cause for discipline.

DATED: October 8, 2018

DocuSigned by:  
*Thomas Heller*  
\_\_\_\_\_  
THOMAS HELLER  
Administrative Law Judge  
Office of Administrative Hearings

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

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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:

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 (l). 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:

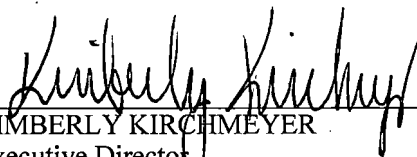
13 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 113944,  
14 issued to Brian Joseph Cassmassi, M.D.;

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*

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