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

12 In the Matter of the Accusation Against:
13
14 SCOTT TOSHIHIKO TAKASUGI, M.D.
2025 Morse Avenue
Sacramento, CA 95825
15
16 Physician and Surgeon's Certificate No. A-43093
17
Respondent.

Case No. 02-2006-175213

A C C U S A T I O N

18 Complainant alleges:

19 PARTIES

- 20 1. David T. Thornton (Complainant) brings this Accusation solely in his
21 official capacity as the Executive Director of the Medical Board of California, Department of
22 Consumer Affairs.
- 23 2. On or about September 8, 2006, the Medical Board of California issued
24 Physician and Surgeon's Certificate Number A-43093 to Scott Toshihiko Takasugi, M.D.
25 (Respondent). The Physician and Surgeon's Certificate was in full force and effect at all times
26 relevant to the charges brought herein and will expire on January 31, 2008, unless renewed. On
27 June 21, 2006, an Order issued from the Medical Board of California voluntarily suspending
28 respondent from the practice of medicine until such time as all criminal charges pending in the

1 Superior Court for the State of California, County of Sacramento, in Case No. 06F05220, have
2 been adjudicated or resolved, and any accusation filed by the Board in this matter has been
3 adjudicated or otherwise resolved. Respondent's medical certificate No. A43093 remains
4 suspended.

5 JURISDICTION

6 3. This Accusation is brought before the Division of Medical Quality
7 (Division) for the Medical Board of California, Department of Consumer Affairs, under the
8 authority of the following laws. All section references are to the Business and Professions Code
9 unless otherwise indicated.

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

14 5. Section 2234 of the Code states:

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

18 "(a) Violating or attempting to violate, directly or indirectly, assisting in or
19 abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5,
20 the Medical Practice Act].

21 "(b) Gross negligence.

22 "(c) Repeated negligent acts. To be repeated, there must be two or more
23 negligent acts or omissions. An initial negligent act or omission followed by a separate
24 and distinct departure from the applicable standard of care shall constitute repeated
25 negligent acts.

26 "(1) An initial negligent diagnosis followed by an act or omission medically
27 appropriate for that negligent diagnosis of the patient shall constitute a single negligent
28 act.

1 "(2) When the standard of care requires a change in the diagnosis, act, or
2 omission that constitutes the negligent act described in paragraph (1), including, but not
3 limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's
4 conduct departs from the applicable standard of care, each departure constitutes a separate
5 and distinct breach of the standard of care.

6 "(d) Incompetence.

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

9 "(f) Any action or conduct which would have warranted the denial of a
10 certificate."

11 6. Section 2236 of the Code states:

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

16 “(b) The district attorney, city attorney, or other prosecuting agency shall notify
17 the Division of Medical Quality of the pendency of an action against a licensee charging a
18 felony or misdemeanor immediately upon obtaining information that the defendant is a
19 licensee. The notice shall identify the licensee and describe the crimes charged and the
20 facts alleged. The prosecuting agency shall also notify the clerk of the court in which the
21 action is pending that the defendant is a licensee, and the clerk shall record prominently
22 in the file that the defendant holds a license as a physician and surgeon.

23 “(c) The clerk of the court in which a licensee is convicted of a crime shall,
24 within 48 hours after the conviction, transmit a certified copy of the record of conviction
25 to the board. The division may inquire into the circumstances surrounding the
26 commission of a crime in order to fix the degree of discipline or to determine if the
27 conviction is of an offense substantially related to the qualifications, functions, or duties
28 of a physician and surgeon.

1 on. Respondent then entered the room and, with no third person present, examined the patient's
2 breasts, placing surgical markings on the breasts with a marking pen. Respondent pinched the
3 patient's nipples, informing her this was necessary in order to make her nipples stay erect for
4 photographs, which respondent then took of the patient's breasts. Respondent also photographed
5 the patient's right wrist. Respondent then asked J.M. to disrobe for a physical examination. J.M.
6 removed her pants but left her underpants on. Respondent told J.M. to remove her underpants so
7 he could examine her vaginal area. Respondent apologized for not having an examination table
8 with stirrups for a "proper exam". At no time did respondent provide J.M. with a medical
9 justification for conducting a vaginal exam, nor did respondent afford the patient the opportunity
10 to object. As soon as J.M. had exposed her vaginal area, without explaining the reason therefor,
11 respondent asked J.M. to use her fingers to spread the labia of her vagina open. Respondent then
12 photographed the patient's vaginal area. Respondent then inserted one finger quickly in and out
13 of the patient's vagina. Respondent then instructed J.M. to dress and leave. Respondent failed to
14 ask the patient for or acquire her consent to photograph her, including her vaginal area.
15 Respondent also failed to document in the patient's chart any record of his conducting a pelvic or
16 genital examination of the patient. In addition, respondent failed to document the patient's
17 preoperative history and physical examination.

18 11. Respondent's examination of patient J.M.'s genital/pelvic area without a
19 third person present and with no reasonable medical indication therefor, incident to a
20 preoperative examination for breast reduction surgery, constitutes gross negligence subject to
21 discipline within the meaning of Code section 2234 (b). Respondent's failure to respect the
22 patient's privacy and dignity by failing to request that a third person female staff member be
23 present, by inappropriately examining her vaginal area, by touching her vaginal area with his
24 finger, and taking photographs of the patient's vaginal area, constitutes gross negligence subject
25 to discipline within the meaning of section 2234 (b) of the Code. Respondent's taking of
26 photographs of the patient's vaginal area without documenting the patient's consent and a bona
27 fide medical indication therefor constitutes gross negligence subject to discipline within the
28 meaning of section 2234 (b) of the Code.

1 SECOND CAUSE FOR DISCIPLINE

(Sexual Misconduct)

2 [Bus. & Prof. Code Section 726]

3 12. Complainant re-alleges paragraph 10, above, and incorporates it by
4 reference herein as if fully set forth at this point.

5 13. Respondent is subject to disciplinary action under section 726 of the Code
6 in that his physical examination of patient J.M.'s vaginal area without a medical indication
7 therefor, his pinching of the patient's nipples, and his photographing of the patient's vaginal area,
8 constitute sexual misconduct.

9 THIRD CAUSE FOR DISCIPLINE

(Failure to Keep and Maintain Adequate and Accurate Records)

10 [Bus. & Prof. Code Section 2266]

11 14. Complainant re-alleges paragraph 10, above, and incorporates it by
12 reference herein as if fully set forth at this point.

13 15. Respondent is subject to disciplinary action under section 2266 of the
14 Code that he failed to keep and maintain adequate and accurate records of his treatment and care
15 of patient J.M. relative to his examination and photographing of her vaginal area, as well as his
16 preoperative history and examination of the patient.

17 FOURTH CAUSE FOR DISCIPLINE

(Gross Negligence)

18 [Bus. & Prof. Code Section 2234 (b)]

19 16. Respondent is subject to disciplinary action under section 2234 (b) of the
20 Code in that his treatment and care of patient The circumstances are as follows:

21 17. On or about October 12, 2001, patient J.H., a twenty year old female,
22 presented to respondent at Kaiser Hospital in Sacramento, California, for an evaluation for breast
23 reduction surgery. On or about November 9, 2001, J.H. again presented to respondent in follow-
24 up. The patient asked respondent about the potential for scarring, having expressed concern that
25 she was a "keloid former". The patient advised that she had a scar on her lower buttock.
26 Respondent asked J.H to remove her pants so he could examine the scar. Respondent did not
27 request the presence of a third person for this examination, nor did he ask J.H. if she objected to
28 his performing an examination of her buttocks or vaginal area without a chaperone present.

1 Respondent examined the scar on the patient's lower buttock and then pushed her underwear to
2 the side and touched her genitalia with his ungloved hand. Respondent then asked J.H. if he
3 could perform a vaginal examination and take photographs. J.H. refused and the examination
4 terminated. J.H. subsequently had her surgery performed by a different Kaiser surgeon.

5 18. Respondent's examination and touching of the patient's genital area with
6 an ungloved hand constitutes gross negligence within the meaning of section 2234 (b) of the
7 Code. Respondent's failure to request a third party chaperone to be present for the examination
8 of the patient, or to seek the patient's consent to an examination of her buttocks and genital area
9 without a third party present, constitutes gross negligence within the meaning of section 2234 (b)
10 of the Code.

11 FIFTH CAUSE FOR DISCIPLINE
12 (Sexual Misconduct)
13 [Bus. & Prof. Code Section 726]

14 19. Complainant re-alleges paragraph 17, above, and incorporates it by
15 reference as if fully set forth at this point.

16 20. Respondent is subject to disciplinary action under section 726 of the Code in
17 that his examination of the patient's intimate bodily areas without a third party chaperone present
18 and touching of the patient's genital area with an ungloved hand constitutes sexual misconduct.

19 SIXTH CAUSE FOR DISCIPLINE
20 (Gross Negligence)
21 [Bus. & Prof. Code Section 2234 (b)]

22 21. Respondent is subject to disciplinary action under section 2234 (b) of the
23 Code in that his treatment and care of patient B.M. constitutes gross negligence. The
24 circumstances are as follows:

25 22. On or about March 8, 2006, B.M., a twenty-four year old female, was
26 scheduled to undergo breast reduction surgery with respondent as Kaiser Hospital in Sacramento,
27 California. While in the preoperative area before surgery, B.M. was lying on a gurney, with her
28 hospital gown on and a bed sheet over her body. B.M. was wearing no underwear under her
gown. The privacy curtain was pulled around her gurney and she had been given a preoperative
medication to relax her. Respondent visited B.M. to discuss the surgery he was about to perform.

1 NINTH CAUSE FOR DISCIPLINE
2 (Gross Negligence)
3 [Bus. & Prof. Code Section 2234 (b)]

4 28. Respondent is subject to disciplinary action under section 2234 (b) of the
5 Code in that his treatment and care of patient C.J. constitutes gross negligence. The
6 circumstances are as follows:

7 29. On or about April 18, 2002, C.J., a thirty-two year old female, presented to
8 respondent at Kaiser Hospital in Sacramento, California, for a preoperative examination relative
9 to planned breast reduction surgery. Respondent examined C.J. in an examination room with no
10 third party chaperone present. He initially instructed C.J. to disrobe from the waist up, examined
11 her breasts, and marked them for surgery with a marking pen. Respondent then instructed the
12 patient to fully disrobe and said he needed to take photos of her labia to make sure her nipple
13 color matched her vagina. The patient was uncomfortable with this examination because she was
14 menstruating at the time. She advised respondent she was uncomfortable, but he indicated that
15 this was not a problem. Respondent used his hand to spread apart her labia and then
16 photographed her vaginal area. Respondent made no medical record of this vaginal examination
17 and photography.

18 30. Respondent's examination and photography of patient C.J.'s vaginal area
19 without a third party chaperone present and without a bona fide medical indication therefor
20 constitutes gross negligence subject to discipline within the meaning of section 2234 (b) of the
21 Code.

22 TENTH CAUSE FOR DISCIPLINE
23 (Sexual Misconduct)
24 [Bus. & Prof. Code Section 726]

25 31. Complainant re-alleges paragraph 29, above, and incorporates it by
26 reference as if fully set forth at this point.

27 32. Respondent is subject to disciplinary action under section 726 of the Code
28 in that his examination and photography of patient C.J.'s vaginal area without a third party
chaperone present and without a bona fide medical indication therefor constitutes sexual
misconduct.

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ELEVENTH CAUSE FOR DISCIPLINE
(Failure to Keep and Maintain Adequate and Accurate Records)
[Bus. & Prof. Code Section 2266]

33. Complainant re-alleges paragraph 29, above, and incorporates it by reference as if fully set forth at this point.

34. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to make any medical record of his examination and photographing of patient C.J.'s vaginal area.

TWELFTH CAUSE FOR DISCIPLINE
(Gross Negligence)
[Bus. & Prof. Code Section 2234 (b)]

35. Respondent is subject to disciplinary action under section 2234 (b) of the Code in that his treatment and care of patient M.O. constitutes gross negligence. The circumstances are as follows:

36. On or about April 19, 2002, M.O., a twenty-three year old female, presented to respondent at Kaiser Hospital in Sacramento, California, for consultation in anticipation of breast reduction surgery. M. O. saw respondent several times prior to her surgery. On or about May 17, 2002, her sister, O.E., accompanied M.O. as she presented to respondent for a pre-surgery examination. Respondent informed M.O. that he needed to examine her vagina in order to obtain a color match for her nipple. M.O. was disrobed for the examination. Respondent used his ungloved hand to spread the labia of her vagina and photographed her vagina. Respondent did not examine or photograph M.O. during any one of three other preoperative visits. Respondent failed to note or record his examination of patient M.O.'s pelvic area and vagina in her patient medical record.

37. Respondent's examination and photographing of M.O.'s vagina prior to breast augmentation surgery, without medical justification therefor, constitutes gross negligence subject to discipline within the meaning of section 2234 (b) of the Code.

THIRTEENTH CAUSE FOR DISCIPLINE
(Sexual Misconduct)
[Bus. & Prof. Code Section 726]

38. Complainant re-alleges paragraph 36, above, and incorporates it by

1 reference as if fully set forth at this point.

2 39. Respondent is subject to disciplinary action under section 726 of the Code
3 in that his unwarranted examination and photographing of patient M.O.'s vagina constitutes
4 sexual misconduct.

5 FOURTEENTH CAUSE FOR DISCIPLINE
6 (Failure to Keep and Maintain Adequate and Accurate Records)
7 [Bus. & Prof. Code Section 2266]

8 40. Complainant re-alleges paragraph 36, above, and incorporates it by
9 reference as if fully set forth at this point.

10 41. Respondent is subject to disciplinary action under section 2266 of the
11 Code in that he failed to record his examination and photographing of patient M.O.'s vagina.

12 FIFTEENTH CAUSE FOR DISCIPLINE
13 (Gross Negligence)
14 [Bus. & Prof. Code Section 2234 (b)]

15 42. Respondent is subject to disciplinary action under section 2234 (b) of the
16 Code in that his treatment and care of patient A.T. constitutes gross negligence. The
17 circumstances are as follows:

18 43. In or about April of 2001, A.T., a twenty-one year old woman, presented
19 to respondent for breast reduction. A.T. saw respondent on two occasions to consult regarding
20 the surgery. During the initial visit a nurse was present with respondent and nothing untoward
21 occurred. A second consultation occurred during which A.T. was accompanied by her mother.
22 Again, nothing untoward occurred. Then, on or about July 25, 2001, A.T. presented to
23 respondent for her preoperative history and examination. A.T. was accompanied by her mother,
24 but on this occasion her mother remained in the waiting room. Staff asked A.T. to disrobe from
25 the waist up in the examining room. Respondent then entered the room alone. He photographed
26 A.T.'s breasts, first pinching her nipples to make them erect. Respondent then directed the
27 patient to get down on all fours so her breasts would hang down independently. Respondent then
28 instructed A.T. to remove her underpants. Respondent remained in the room and watched while
the patient undressed. A.T. asked respondent why this further examination was necessary.
Respondent stated that her areolae were stretched and he needed to color match her nipples to her

1 Code in that his treatment and care of patient S.W. constitutes gross negligence. The
2 circumstances are as follows:

3 50. On or about June 16, 1998, patient S.W., a then-seventeen year old female,
4 presented to respondent for preoperative examination following an evaluation of congenital
5 breast asymmetry and a tuberous breast deformity. Respondent had previously recommended
6 breast reduction surgery, to be followed by bilateral breast augmentation. The preoperative
7 examination occurred at Kaiser Hospital in Sacramento. During the examination, respondent
8 informed S.W. that he needed to examine her vaginal area so he could "color match" her
9 nipple(s) to the vaginal tissue. S.W.'s mother was present during this examination. Respondent
10 then examined the patient's vaginal area and held a "paint chip" next to her vagina and
11 photographed her vaginal area next to the "paint chip". Respondent failed to document this
12 examination and photography in the patient record, although he did record the fact that he
13 conducted a "Preop H & P" without providing the details thereof. The patient subsequently
14 underwent the planned surgery without incident.

15 51. Because there was no medical indication for respondent to conduct an
16 examination of patient S.W.'s vaginal area and because his explanation that he needed to "color
17 match" the patient's nipple(s) to her vagina has no medical basis, respondent's conduct relative
18 to patient S.W. constitutes gross negligence subject to discipline within the meaning of section
19 2234 (b) of the Code.

20 NINETEENTH CAUSE FOR DISCIPLINE

21 (Sexual Misconduct)

22 [Bus. & Prof. Code Section 726]

23 52. Complainant re-alleges paragraph 50, above, and incorporates it by
24 reference herein as if fully set forth at this point.

25 53. Respondent is subject to discipline under section 726 of the Code in that
26 his medically unwarranted examination of patient S.W.'s vaginal area and photographing of her
27 vaginal area for the purported reason that he needed to "color match" her nipple(s) to the vagina,
28 constitutes sexual misconduct.

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1 raised. The patient's vaginal area and genitalia were visibly exposed in the photo(s). At no time
2 did respondent offer to drape the patient's private areas or otherwise provide for patient modesty
3 during his examination and photography of her private areas. Respondent offered no
4 explanation, medical or otherwise, as to why the patient's genital area needed to be exposed or
5 photographed. Respondent failed to document either this examination or the photography in the
6 patient record, making no record whatsoever of this patient visit and preoperative examination.

7 58. Respondent's examination and photographing of patient R.G.'s vaginal
8 area and genitalia incident to his examination of the patient for skin graft to repair an upper chest
9 surgical wound, without offering or enabling the patient an opportunity to drape her genital area,
10 constitutes gross negligence within the meaning of section 2234 (b) of the Code.

11 TWENTY-SECOND CAUSE FOR DISCIPLINE

12 (Sexual Misconduct)

13 [Bus. & Prof. Code Section 726]

14 59. Complainant re-alleges paragraph 57, above, and incorporates it by
15 reference herein as if fully set forth at this point.

16 60. Respondent's examination and photographing of the patient's vaginal area
17 and genitalia, and his posing of the patient in sexually suggestive positions for the supposed
18 purpose of photographing skin graft areas, constitutes sexual misconduct within the meaning of
19 section 726 of the Code.

20 TWENTY-THIRD CAUSE FOR DISCIPLINE

21 (Failure to Keep and Maintain Adequate and Accurate Records)

22 [Bus. & Prof. Code Section 2266]

23 61. Complainant re-alleges paragraph 57, above, and incorporates it by
24 reference herein as if fully set forth at this point.

25 62. Respondent is subject to discipline under section 2266 of the Code in that
26 his failure to document patient R.G.'s preoperative visit and the details of his examination and
27 photography of the patient constitutes a failure to keep and maintain adequate and accurate
28 records.

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1 TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Gross Negligence)

2 [Bus. & Prof. Code Section 2234 (b)]

3 63. Respondent is subject to discipline under section 2234 (b) of the Code in
4 that his treatment and care of patient J.S. constitutes gross negligence. The circumstances are as
5 follows:

6 64. On or about September 29, 1998, B.W., a then-fourteen year old girl,
7 presented to respondent at Kaiser Hospital in Sacramento, California, for a consultation
8 regarding breast asymmetry. The patient was accompanied by her mother. Respondent informed
9 the patient that he needed to determine whether she was done developing and said he could
10 determine this from the color of her vagina. Respondent asked the patient to disrobe and recline
11 on an examination table with her feet in stirrups. Respondent spread the patient's labia of her
12 vagina. Respondent then held a "color chart" next to the patient's vagina. He photographed her
13 vaginal area. Respondent then informed the patient and her mother that the color of her vagina
14 indicated that she was not through developing and should return in one year for reevaluation.
15 Respondent failed to record the consultation and examination of this patient. The patient decided
16 not to return.

17 65. Respondent's examination of the patient's vagina and explanation that he
18 was evaluating the color of the vagina or labia to determine her physical development pursuant to
19 a consultation for breast asymmetry constitutes gross negligence in that such an examination for
20 this purpose is medically specious and without value.

21 TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Sexual Misconduct)

22 [Bus. & Prof. Code Section 726]

23 66. Complainant re-alleges paragraph 64, above, and incorporates it by
24 reference herein as if fully set forth at this point.

25 67. Respondent's examination and photographing of the patient's vaginal area
26 and genitalia incident to his evaluation of the patient for breast asymmetry constitutes sexual
27 misconduct within the meaning of section 726 of the Code.

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1 TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Sexual Misconduct)

2 [Bus. & Prof. Code Section 726]

3 73. Complainant re-alleges paragraph 71, above, and incorporates it by
4 reference herein as if fully set forth at this point.

5 74. Respondent's examination of the patient's vaginal area incident to his
6 evaluation of the patient for breast reconstruction surgery constitutes sexual misconduct within
7 the meaning of section 726 of the Code.

8 TWENTY-NINTH CAUSE FOR DISCIPLINE

(Failure to Keep and Maintain Adequate and Accurate Records)

9 [Bus. & Prof. Code Section 2266]

10 75. Complainant re-alleges paragraph 71, above, and incorporates it by
11 reference herein as if fully set forth at this point.

12 76. Respondent is subject to discipline under section 2266 of the Code in that
13 his failure to document the details of his examination of the vagina of patient K.C. during her
14 preoperative visit constitutes a failure to keep and maintain adequate and accurate records.

15 THIRTIETH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

16 [Bus. & Prof. Code Section 2234 (c)]

17 77. Complainant re-alleges paragraphs 9 through 76, above and incorporates
18 them by reference as if fully set forth at this point.

19 78. Respondent is subject to disciplinary action under section 2234 (c) of the
20 Code in that his treatment and care of patients J.M., J.H., B.M., C.J., M.O., A.T., S.W., R.G.,
21 B.W. and K.C. constitutes repeated negligent acts.

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PRAYER

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

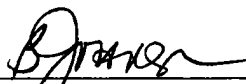
1. Revoking or suspending Physician and Surgeon's Certificate Number A-43093, issued to Scott Toshihiko Takasugi, M.D.;

Revoking, suspending or denying approval of Scott Toshihiko Takasugi, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

2. If placed on probation, ordering Scott Toshihiko Takasugi, M.D. to pay the Division of Medical Quality costs of probation monitoring.

3. Taking such other and further action as deemed necessary and proper.

DATED: August 29, 2007



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

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