

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

**In the Matter of the Accusation)
Against:)**

BENEDICT LIAO, M.D.)

File No. 06-2008-196426

**Physician's and Surgeon's)
Certificate No. A-30083)**

Respondent)

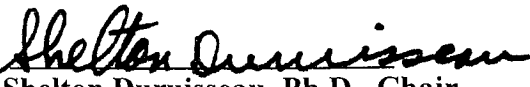
DECISION

**The attached Stipulated Settlement and Disciplinary 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 February 25, 2011.

IT IS SO ORDERED January 26, 2011.

MEDICAL BOARD OF CALIFORNIA

By: 
Shelton Duruisseau, Ph.D., Chair
Panel A

1 EDMUND G. BROWN JR.
Attorney General of California
2 TRINA L. SAUNDERS
Acting Supervising Deputy Attorney General
3 MARGARET PHE
Deputy Attorney General
4 State Bar No. 207205
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 576-7776
6 Facsimile: (213) 897-9395
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

11 **BENEDICT LIAO, M.D.**

12 600 N. Garfield Avenue, Suite 206
13 Monterey Park, California 91754

14 Physician's and Surgeon's Certificate Number
15 A30083,

16 Respondent.

Case No. 06-2008-196426

OAH No. 2010060249

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 In the interest of a prompt and speedy settlement of this matter, consistent with the public
19 interest and the responsibility of the Medical Board of California (Board), the parties hereby
20 agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to
21 the Board for approval and adoption as the final disposition of the Accusation.

22 **PARTIES**

23 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
24 California. She brought this action solely in her official capacity and is represented in this matter
25 by Edmund G. Brown Jr., Attorney General of the State of California, by Margaret Phe, Deputy
26 Attorney General.

27 2. Respondent Benedict Liao, M.D. (Respondent) is represented in this proceeding by
28 attorney Peter R. Osinoff, whose address is:

Peter R. Osinoff, Esq.
Bonne Bridges Mueller O'Keefe & Nichols
3699 Wilshire Boulevard, 10th Floor
Los Angeles, CA 90010-2719

3. On or about April 14, 1976, the Medical Board of California issued Physician's and Surgeon's Certificate Number A30083 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 06-2008-196426 and will expire on April 30, 2012, unless renewed.

JURISDICTION

4. Accusation No. 06-2008-196426 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 2, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 06-2008-196426 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 06-2008-196426. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

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CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 06-2008-196426, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a prima facie case for the charges in the Accusation. Respondent hereby gives up his right to contest those charges.

10. Respondent agrees that his license is subject to discipline and agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1 condition. Failure to successfully complete the educational programs or courses during the first
2 six months after the effective date of the Decision constitutes a material breach of this Order.

3 Educational programs or courses as described above that are taken after the acts that gave
4 rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the
5 sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition
6 if the course would have been approved by the Board or its designee had the course been taken
7 after the effective date of this Decision.

8 Respondent shall submit a certification of successful completion to the Board or its
9 designee not later than 15 days after successfully completing the course, or not later than 15
10 calendar days after the effective date of the Decision, whichever is later.

11 C. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the
12 effective date of this Decision, Respondent shall enroll in a course in medical record keeping, at
13 Respondent's expense, approved in advance by the Board or its designee. Said course shall not
14 be less than 16 hours, and shall be in addition to Respondent's CME requirements for renewal of
15 licensure. Failure to successfully complete the course during the first six months after the
16 effective date of this Decision constitutes a material breach of this Order.

17 A medical record keeping course taken after the acts that gave rise to the charges in the
18 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
19 or its designee, be accepted towards the fulfillment of this condition if the course would have
20 been approved by the Board or its designee had the course been taken after the effective date of
21 this Decision.

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 days after successfully completing the course, or not later than 15
24 calendar days after the effective date of the Decision, whichever is later.

25 D. FAILURE TO COMPLY WITH ORDER A material breach by Respondent of
26 this Order shall constitute unprofessional conduct and shall be a basis for further disciplinary
27 action by the Board. In such circumstances, the Complainant may reinstate the Accusation in
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1 case number 06-2008-196426 and/or file a supplemental accusation alleging any material breach
2 of this Order by Respondent as unprofessional conduct.

3
4 ACCEPTANCE

5 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
6 discussed it with my attorney, Peter R. Osinoff. I understand the stipulation and the effect it will
7 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
8 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
9 Decision and Order of the Board.

10
11 DATED: 11/4/2010

Benedict S. Liao
BENEDICT LIAO, M.D.
Respondent

14 I have read and fully discussed with Respondent Benedict Liao, M.D. the terms and
15 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
16 I approve its form and content.

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18 DATED: 11/4/10

Peter R. Osinoff
Peter R. Osinoff, Esq.
Attorney for Respondent

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6
STIPULATED SETTLEMENT (06-2008-196426)

1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3 submitted for consideration by the Board.

4 Dated: 11/4/2010

Respectfully Submitted,

5 EDMUND G. BROWN JR.
6 Attorney General of California
7 TRINA L. SAUNDERS
8 Acting Supervising Deputy Attorney
9 General



10 MARGARET PHE
11 Deputy Attorney General
12 *Attorneys for Complainant*

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Exhibit A

Accusation No. 06-2008-196426

EDMUND G. BROWN JR.
Attorney General of California
MARGARET PHE
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300 South Spring Street, Suite 1702
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Telephone: (213) 576-7776
Facsimile: (213) 897-1071
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 06-2008-196426

BENEDICT S. LIAO, M.D.

600 North Garfield Avenue, Suite 206
Monterey Park, California 91754

ACCUSATION

Physician's and Surgeon's Certificate Number
A30083,

Respondent.

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California (Board),¹ Department of Consumer Affairs.

¹ As used herein, the term "Board" means the Medical Board of California. As also used herein, the Division of Medical Quality shall also be deemed to refer to the Board. See B&P Code section 2002.

2. On or about April 14, 1976, the Medical Board of California issued Physician's and Surgeon's Certificate Number A30083 to Benedict S. Liao, M.D. (Respondent). That certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2010, unless renewed.

JURISDICTION

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

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the division.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

"(4) Be publicly reprimanded by the division.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the division and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

1 5. Section 2234 of the Code states:

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

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

8 "(b) Gross negligence.

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

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

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

19 "(d) Incompetence.

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

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

23 6. Section 2266 of the Code states: "The failure of a physician and surgeon to
24 maintain adequate and accurate records relating to the provision of services to their patients
25 constitutes unprofessional conduct."

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

7. Respondent is subject to disciplinary action under section 2234, subdivision (b), in that he was grossly negligent in his care and treatment of patient L.Y. The circumstances are as follows:

8. On or about October 5, 2005, patient L.Y., then a 37-year-old married female, initially presented to Respondent's office to have a therapeutic abortion. L.Y.'s last menstrual period was on August 6, 2005. But she reportedly experienced vaginal bleeding and abdominal pain on September 3, 2005. Another physician started her on Tylenol with Codeine for the abdominal pain that was associated with the bleeding.

9. Respondent performed a physical examination of the patient. He recorded her vital signs and the results from the examination of her head, eyes, ears, nose, throat, neck, chest and lungs, heart, abdomen and pelvis. Respondent noted that L.Y.'s abdomen was not tender. The pelvic examination revealed moderate bloody fluid in the vagina. Respondent further indicated that L.Y. had an anteverted uterus² and that it was non-tender. There was no adnexal mass.³ However, the ultrasound revealed a five to six-centimeters ovarian cyst in the left adnexa and a six to seven-week sized intrauterine pregnancy.⁴ Respondent did not perform a quantitative beta-human chorionic gonadotropin (HCG) blood test.⁵ Also, his initial evaluation did not include a patient blood type and Rh factor⁶ evaluation. His clinical impression was as follows: (1) incomplete abortion,⁷ (2) impending abortion⁸ and (3) left ovarian cyst five to six-centimeters.

10. Respondent's orders for the therapeutic abortion included an IV solution, intravenous valium and Xylocaine.⁹ The dilation and evacuation was completed. Respondent

² An anteverted uterus tilts slightly forward towards the pubic bone.

³ No adnexal mass means that there is no mass in the area of the pelvis alongside the uterus that includes the area of tubes and ovaries.

⁴ An intrauterine pregnancy is a pregnancy inside the uterus.

⁵ The test measures the exact amount of the pregnancy hormone, human chorionic gonadotropin (HCG) is in the bloodstream.

⁶ The Rh factor is a type of protein on the surface of red blood cells.

⁷ An incomplete abortion is an incomplete spontaneous miscarriage.

⁸ An impending abortion is an impending spontaneous miscarriage.

⁹ Xylocaine is a local anesthetic for a paracervical nerve block.

1 identified a small amount of products of conception¹⁰ on physical gross exam. A post dilation
2 and evacuation ultrasound confirmed that the previously identified intrauterine pregnancy was no
3 longer visible. L.Y. was discharged after the procedure with planned follow up for one-week
4 later and a prescription for Amoxicillin (antibiotics).

5 11. Respondent did not send the products of conception for pathologic exam, since
6 L.Y. did not want to incur the additional charge. However, Respondent neither documented the
7 patient's refusal nor obtained a signed informed refusal of care from her. Respondent performs a
8 post dilation and evacuation ultrasound to confirm that the abortion is completed. He sends the
9 products of conception for pathologic exam only if he does not obtain enough products of
10 conception.

11 12. On or about October 13, 2005, L.Y. presented to Respondent's office for a follow-
12 up examination. At that time, she did not have any complaints, abdominal pain, or vaginal
13 bleeding. However, a physical exam and ultrasound revealed bloody fluid in the cul-de-sac and
14 cervical erosion. No abdominal or pelvic exam was documented. Respondent did not perform a
15 quantitative beta-HCG blood test on this occasion, because the level of the patient's HCG would
16 not be helpful. L.Y. underwent a repeat uterine aspiration, but the aspiration did not yield any
17 pregnancy tissue. She was discharged with the antibiotic Doxycycline.

18 13. On or about October 24, 2005, L.Y. returned to Respondent's office complaining
19 of vaginal spotting and off and on abdominal pain for one to two days. No abdominal or pelvic
20 exam was documented. Respondent's clinical impression was cervical erosion and to rule out an
21 ectopic pregnancy.¹¹ Respondent recorded the ultrasound results as negative, no placental tissue
22 seen inside the uterus, and no fluid (blood or cyst fluid) seen outside of the uterus in the pelvis.
23 However, the endometrial lining increased three to four millimeters in thickness. Respondent's
24 treatment plan included a prescription of the vaginal yeast medication Gyne-Lotrimin for the
25 cervical erosion and the antibiotic Cipro. His plan for the persistent abdominal pain was to
26 prescribe Methotrexate. Respondent failed to order additional diagnostic testing to confirm or to

27 ¹⁰ Products of conception are the pregnancy tissues from the uterus.

28 ¹¹ An ectopic pregnancy is a pregnancy outside of the uterus.

1 exclude the diagnosis of an ectopic pregnancy. He did not perform a beta-HCG blood test.
2 Although Respondent suspected an ectopic pregnancy on this visit, he did not schedule a follow-
3 up visit with L.Y. Respondent simply told the patient to return to the office during office hours or
4 to go to the Emergency Room after hours for an increase in abdominal pain.

5 14. On or about October 25, 2005, patient L.Y. presented to another physician
6 complaining of severe abdominal pain with vaginal bleeding. An examination revealed
7 significant abdominal distension¹² with abdominal pain. Also, there was significant tenderness,
8 guarding and rebound.¹³ The clinical impression was acute peritonitis, probably secondary to
9 perforation of the uterus or of other regions. L.Y. was immediately referred to the Emergency
10 Room for evaluation. The ultrasound performed at the Emergency Room revealed a mass in the
11 upper part of the uterus measuring 6.47 x 5.49 x 6.5 centimeters, a mass in the left adnexa
12 measuring 4.2 x 2.4 x 2.6 centimeters, and free fluid in the abdomen. The Emergency Room
13 physician's clinical impression was possible ruptured ectopic pregnancy or possible perforation of
14 the uterus. Patient L.Y. underwent an exploratory laparotomy (surgery on the abdomen) and at
15 that time was found to have a right tubal ectopic pregnancy, confirmed on pathologic exam, that
16 had ruptured with resultant internal hemorrhage. Treatment involved removal of L.Y.'s right
17 fallopian tube.

18 15. Respondent's failure to order additional diagnostic testing to confirm or to exclude
19 the diagnosis of an ectopic pregnancy, including a formal ultrasound and beta-HCG blood test,
20 and his failure to give L.Y. close clinical follow-up care represent gross negligence.

21 SECOND CAUSE FOR DISCIPLINE

22 (Incompetence)

23 16. Respondent is subject to disciplinary action under section 2234, subdivision (d), in
24 that he exhibited incompetence in the care and treatment L.Y. as follows:

25
26 ¹² Abdominal distension is the swelling of the abdominal cavity that creates painful
pressure on the internal organs.

27 ¹³ Guarding is an involuntary spasm of the abdominal muscles to prevent movement.
28 Rebound tenderness is increased pain upon release of pressure.

1 17. Paragraphs 8 through 15 inclusive, above are incorporated by reference herein as if
2 fully set forth.

3 18. Respondent exhibited incompetence during his care, treatment, and management
4 of L.Y. by failing to evaluate the patient's blood type and Rh factor during her initial visit, and by
5 failing to order a confirmatory ultrasound or perform a vaginal ultrasound to better identify the
6 pelvic anatomy during her office visits.

7 THIRD CAUSE FOR DISCIPLINE

8 (Failure to Maintain Adequate Medical Records)

9 19. Respondent is subject to disciplinary action under section 2266 in that he failed to
10 maintain adequate and accurate medical records relating to his care and treatment of L.Y. as
11 follows:

12 20. Paragraphs 8 through 15, inclusive, above are incorporated herein by reference as
13 if fully set forth.

14 21. Respondent failed to maintain adequate and accurate medical records relating to
15 his care and treatment of L.Y. by failing to document L.Y.'s informed refusal of care to send the
16 products of conception for pathologic exam and by failing to document an examination of L.Y.'s
17 abdomen and pelvis during her appointments on October 13, 2005 and October 24, 2005.

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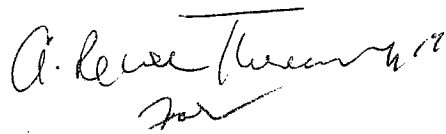
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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A30083, issued to Benedict S. Liao, M.D.
2. Revoking, suspending or denying approval of his authority to supervise physician's assistants, pursuant to section 3527 of the Code;
2. Ordering him to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: March 2, 2010



LINDA K. WHITNEY
Interim Executive Director
Medical Board of California
State of California
Complainant

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