

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 STEVE DIEHL
Deputy Attorney General
4 State Bar No. 235250
California Department of Justice
5 2550 Mariposa Mall, Room 5090
Fresno, CA 93721
6 Telephone: (559) 477-1626
Facsimile: (559) 445-5106
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Oct. 24 20 17*
BY *[Signature]* ANALYST

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

11 In the Matter of the Accusation Against:

Case No. 800-2016-025845

12 **ROBERT ADAMS GRAHAM, M.D.**
13 728 E. Bullard Avenue, Suite 101
Fresno, CA 93710

A C C U S A T I O N

14 Physician's and Surgeon's Certificate
15 No. A 32806,

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about August 21, 1978, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 32806 to Robert Adams Graham, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on June 30, 2018, unless renewed.

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JURISDICTION

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

4 4. Section 2227 of the Code states:

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

9 “(1) Have his or her license revoked upon order of the board.

10 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
11 order of the board.

12 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
13 order of the board.

14 “(4) Be publicly reprimanded by the board. The public reprimand may include a
15 requirement that the licensee complete relevant educational courses approved by the board.

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

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

24 5. Section 2234 of the Code, states:

25 “The board shall take action against any licensee who is charged with unprofessional
26 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
27 limited to, the following:
28

1 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter.

3 “(b) Gross negligence.

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

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

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

14 “(d) Incompetence.

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

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

18 “(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of the
21 proposed registration program described in Section 2052.5.

22 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder
24 who is the subject of an investigation by the board.”

25 6. Section 2052 of the Code states:

26 “(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
27 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
28 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,

1 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
2 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
3 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being
4 authorized to perform the act pursuant to a certificate obtained in accordance with some other
5 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand
6 dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
7 Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either
8 imprisonment.

9 “(b) Any person who conspires with or aids or abets another to commit any act described
10 in subdivision (a) is guilty of a public offense, subject to the punishment described in that
11 subdivision.

12 “(c) The remedy provided in this section shall not preclude any other remedy provided by
13 law.”

14 FIRST CAUSE FOR DISCIPLINE

15 (Gross Negligence)

16 7. Respondent Robert Adams Graham, M.D. is subject to disciplinary action under
17 section 2234, subdivision (b), in that he engaged in an act or acts amounting to gross negligence.

18 The circumstances are as follows:

19 8. Between July, 2011, and November 4, 2014, Rebekah DeMoss, R.N., provided
20 cosmetic treatments to hundreds of patients without physician supervision. These treatments
21 included Botox anti-wrinkle treatments, and Juvederm injectable facial filler treatments. Both of
22 these treatments are available by prescription only. These treatments were provided to patients at
23 spas and private homes, under the name “ZLB Rejuvenation.” Nurse DeMoss employed
24 Respondent as Medical Director of ZLB Rejuvenation, for which he was paid \$500 per month.
25 During the time that Respondent was Medical Director of ZLB Rejuvenation, he did not perform
26 any examinations of patients who received cosmetic treatments performed by DeMoss, and he did
27 not review any patient medical records related to cosmetic treatments performed by DeMoss.
28 Respondent allowed DeMoss to order medications using his name and medical license.

1 Respondent was unaware of when, what, or how much medication DeMoss ordered, or where she
2 ordered it from. Respondent had no standardized protocols in place governing the care DeMoss
3 provided, and Respondent was unaware of what, if any, prior training DeMoss had in performing
4 cosmetic treatments.

5 9. Registered Nurses may perform cosmetic treatments under the supervision of a
6 physician. When prescription drugs or devices are to be used, a prior physical examination by a
7 physician is required. Once the examination is performed, the physician can delegate the
8 procedure to the nurse, pursuant to standardized procedures that dictate when the physician
9 should be contacted regarding a patient's condition. The physician must be immediately
10 reachable and able to assist in the management of the patient's care.

11 10. On or about November 3, 2014, patient S.E. presented to DeMoss for a Botox
12 treatment of wrinkles in the glabellar area and chin as well as a browlift. Respondent was not
13 present and provided no prior physical examination. DeMoss provided the requested treatment
14 while under observation by an undercover investigator.

15 11. Patient P.E. presented to DeMoss for Juvederm and Botox treatments on four
16 occasions: April 27, 2013; November 29, 2013; June 6, 2014; and September 9, 2014. DeMoss
17 failed to document a medical history, and Respondent failed to perform a prior physical
18 examination. Respondent never reviewed this patient's chart.

19 12. Patient S.H. presented to DeMoss on nine occasions between November 25, 2012,
20 and October 7, 2014, for Botox and/or Juvederm treatments. DeMoss never documented a
21 medical history, and Respondent never documented a prior physical examination. Respondent
22 never reviewed this patient's chart.

23 13. Patient C.H. presented to DeMoss on three occasions: December 4, 2013; March 24,
24 2013; and September 12, 2014, for Botox and/or Juvederm treatments. Respondent never
25 documented a prior physical examination of this patient. Respondent never reviewed this
26 patient's chart.

27 14. Patient R.S. presented to DeMoss on ten occasions between July 23, 2011, and
28 November 4, 2014, for Botox and/or Juvederm treatments. DeMoss never documented a medical

1 history, and Respondent never documented a prior physical examination. Respondent never
2 reviewed this patient's chart.

3 15. Respondent committed gross negligence in allowing a registered nurse, whom he had
4 agreed to supervise, to evaluate and treat patients with Botox and Juvederm without a prior
5 physical examination.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Repeated Negligent Acts)**

8 16. Respondent Robert Adams Graham, M.D. is subject to disciplinary action under
9 section 2234, subdivision (c), in that he committed repeated acts of negligence. The
10 circumstances are set forth in paragraphs 8 through 15, above, which are incorporated here by
11 reference.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Aiding/Abetting Unlicensed Practice)**

14 17. Respondent Robert Adams Graham, M.D. is subject to disciplinary action under
15 section 2234, subdivision (a), and section 2052, subdivision (b) in that aided and abetted the
16 unlicensed practice of medicine. The circumstances are set forth in paragraphs 8 through 15,
17 above, which are incorporated here by reference.

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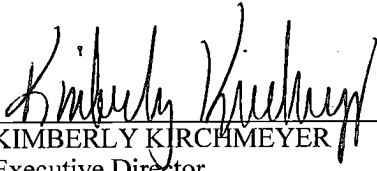
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PRAYER

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 A 32806, issued to Robert Adams Graham, M.D.;
2. Revoking, suspending or denying approval of Robert Adams Graham, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Robert Adams Graham, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: October 24, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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