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

In the Matter of the First Amended Accusation and Citation Against:	)	
RICHARD J. HOLMES, M.D.	)	**Case No. 800-2014-008269**
Physician's and Surgeon's Certificate No. G 89434	)	
Respondent	)	

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on February 15, 2019.

IT IS SO ORDERED February 8, 2019.

MEDICAL BOARD OF CALIFORNIA

By: Kimberly Kirchmeyer
Kimberly Kirchmeyer
Executive Director

XAVIER BECERRA
Attorney General of California
GLORIA L. CASTRO
Senior Assistant Attorney General
STEVE DIEHL
Supervising Deputy Attorney General
State Bar No. 235250
California Department of Justice
2550 Mariposa Mall, Room 5090
Fresno, CA 93721
Telephone: (559) 705-2313
Facsimile: (559) 445-5106
Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **RICHARD J. HOLMES, M.D.** **1041 E. Hillside Circle** **Provo, UT 84604** **Physician's and Surgeon's Certificate No. G 89434** Respondent.	Case No. 800-2014-008269 OAH No. 2017090540 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Steve Diehl, Supervising Deputy Attorney General.

2. Richard J. Holmes, M.D. (Respondent) is represented in this proceeding by attorney Alan Castillo, Esq., whose address is: 23152 Verdugo Drive, Suite 201, Laguna Hills, CA 92653.

3. On or about August 23, 2013, the Board issued Physician's and Surgeon's Certificate No. G 89434 to Richard J. Holmes, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2014-008269 and will expire on March 31, 2019, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2014-008269 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on September 19, 2017. Respondent timely filed his Notice of Defense contesting the First Amended Accusation. A copy of First Amended Accusation No. 800-2014-008269 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2014-008269. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and 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 First Amended Accusation; 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 that the charges and allegations in First Amended Accusation No. 800-2014-008269, 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 First Amended Accusation without the expense and uncertainty of further proceedings, Respondent does not contest that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2014-008269 and that he has thereby subjected his license to disciplinary action. Respondent agrees that if he ever petitions for reinstatement of his Physician's and Surgeon's Certificate No. G 89434, all of the charges and allegations contained in First Amended Accusation No. 800-2014-008269 shall be deemed true, correct and fully admitted by respondent for purposes of that reinstatement proceeding or any other licensing proceeding involving respondent in the State of California.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

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 Board may communicate directly with the Board regarding this stipulation and surrender, 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 Surrender 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.

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12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and 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 Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 89434, issued to Respondent Richard J. Holmes, M.D., is surrendered and accepted by the Board.

1. The voluntary surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

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

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

If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in First Amended Accusation No. 800-2014-008269 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

4. Respondent may not petition for reinstatement of a revoked or surrendered license/registration for two (2) years from the effective date of this Decision.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in First Amended Accusation, No. 800-

2014-008269 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

6. IMPOSITION OF FINE. Pursuant to the Citation issued in conjunction with and incorporated into the First Amended Accusation, Respondent shall make payment to the Board in the amount of $30,000. Payment shall be made within 30 days of the effective date of this Decision. Payment shall be made to:

Medical Board of California
P.O. Box 15588
Sacramento, CA 95852

ACCEPTANCE

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

DATED: 1/4/2019

RICHARD J. HOLMES, M.D.
Respondent

I have read and fully discussed with Respondent Richard J. Holmes, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 1/4/2019

ALAN CASTILLO, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 1/4/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
GLORIA L. CASTRO
Senior Assistant Attorney General

STEVE DIEHL
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2014-008269

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 19 2017
BY: K. Young ANALYST

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

In the Matter of the First Amended Accusation and Citation Against: **RICHARD J. HOLMES, M.D.** 1041 E Hillside Cir Provo , UT 84604 **Physician's and Surgeon's Certificate No. G 89434,** Respondent.	Case No. 800-2014-008269 **FIRST AMENDED ACCUSATION AND NOTIFICATION OF VIOLATION AND IMPOSITION OF FINE (CITATION)**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation and Citation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about August 23, 2013, the Medical Board issued Physician's and Surgeon's Certificate Number G 89434 to Richard J. Holmes, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2019, unless renewed.

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JURISDICTION

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

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

5. Section 2234 of the Code, states:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

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

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

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

6. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized

the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

7. Section 2242.1 of the Code states:

"(a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication, except as authorized by Section 2242.

"(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either a fine of up to twenty-five thousand dollars ($25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars ($25,000) per occurrence.

"(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

"(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Contingent Fund of the Medical Board of California.

"(e) If the person or entity that is the subject of an action brought pursuant to this section is not a resident of this state, a violation of this section shall, if applicable, be reported to the person's or entity's appropriate professional licensing authority.

"(f) Nothing in this section shall prohibit the board from commencing a disciplinary action against a physician and surgeon pursuant to Section 2242."

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent Richard J. Holmes, M.D. is subject to disciplinary action under section 2234, subdivision (b) in that he engaged in an act or acts amounting to gross negligence. The circumstances are as follows:

9. On or about December 30, 2014, a female investigator employed by the Board logged into the www.kwikmed.com website. She entered the fictitious name "Dana Taylor," date of birth December 24, 1969, and filled out the information requested by the website in order to purchase Ella.[1] Specifically, the investigator typed in a gender, date of birth, height, and weight, and indicated that she had "a recent physical examination by a Physician who is available for any necessary follow-up care and instructions" and that she was "requesting the prescription medication(s) solely for [her] therapeutic use and will not distribute any medication to others." She then provided the following responses to the website questionnaire (responses in italics):

(a) Are you pregnant now? *Don't know*

(b) Do you think you may be pregnant? *Maybe*

(c) Are you currently breastfeeding? *No*

(d) Have you had a failure of a contraceptive device (broken condom or diaphragm) or unprotected intercourse? *No*

(e) Please list all medications you are taking, include both prescription or over-the-counter medications. If none, please enter 'none.' *Motrin, tums, Vicodin*

(f) Please list any serious illnesses you have or have had in the past. If none, please enter 'none.' *None*

(g) Please list any allergies you have or have had in the past. If none, please enter 'none.' *None*

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[1] Ella (ulipristal acetate) is an emergency contraceptive drug legally available only by prescription. It is a dangerous drug as defined by Business and Professions Code section 4022.

(h) Why do you need emergency contraception? (Choose all that apply.) *I don't need it myself, I'm getting it for someone else.*

(i) Why did you decide to use ella instead of another kind of emergency contraception, like Next Choice or Plan B One-Step (Choose all that apply.) *I don't know how or where to get another kind of emergency contraception.*

(j) Why did you decide to get your ella prescription online instead of from a doctor or clinic (Choose all that apply.) *It's easier to go online.*

(k) If this ella online service had not been available to you, what would you most likely have done? (Choose one answer.) *I really have no idea.*

(l) I hereby waive pharmacist counseling at this time. I understand that if I have any questions a pharmacist is available. *I understand.*

10. After completing this questionnaire, the investigator clicked on the "proceed to checkout" button and provided billing and shipping addresses and credit card information.

11. On or about January 2, 2015, Respondent reviewed the information that the investigator had input into the website. Next to the investigator's response stating that she did not know whether or not she was pregnant, he entered the comment, "noted."

12. On or about January 8, 2015, the investigator picked up a package at the shipping address she provided, which contained one tablet of Ella. The tablet was in a box marked "rx only," and had a prescription label indicating that the prescribing doctor was Respondent. The fill date was January 2, 2015. The package also included an invoice, a coupon for a refill, and information regarding contraindications, precautions, and possible side effects.

13. On or about February 6, 2015, the same female investigator again logged on to the www.kwikmed.com website, this time using the fictitious name "Andrew Lewis," date of birth October 2, 1969. Now posing as a male patient, the investigator ordered Viagra.[2] After providing

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[2] Viagra (sildenafil citrate) is a drug used to treat erectile dysfunction. It is available only by prescription, and is a dangerous drug as defined by Business and Professions Code section 4022.

a gender, date of birth, height, and weight, she indicated that she had "a recent physical examination by a Physician who is available for any necessary follow-up care and instructions" and that she was "requesting the prescription medication(s) solely for [her] therapeutic use and will not distribute any medication to others." She then provided the following responses to the website questionnaire (responses in italics):

(a) Over the past 4 weeks, when you attempted sexual intercourse, how often was it satisfactory for you? *Did not attempt intercourse*

(b) During the past 30 days, how would you rate the level of your sexual drive? Medium

(c) How long have you had sexual problems? *Between 4 and 12 months*

(d) Do you have a significant curvature of your penis or have you been diagnosed with Peyronie's Disease (a hard lump that forms on the erection tissue of the penis)? *No*

(e) Have you had an erection lasting more than 4 hours or become painful or been diagnosed with priapism? *No*

(f) Have you used any method or treatment for erection problems in the past? *No*

(g) Over the past six months, how do you rate your confidence that you could get and keep an erection? *Moderate*

(h) When you had erections with sexual stimulation, how often were your erections hard enough for penetration (entering your partner)? *Sometimes (about half the time)*

(i) During sexual intercourse, how often were you able to maintain your erection after you had penetrated (entered) your partner? *Sometimes (about half the time)*

(j) Over the past 4 weeks, during sexual intercourse, how difficult was it to maintain your erection to completion of intercourse? *Difficult*

(k) Over the last 3 months, have you had any pain, pressure, or discomfort in your chest, left arm, shoulder, or jaw? *No*

(l) Have you ever had an EKG (electrocardiogram) performed on your heart? *No*

(m) How long has it been since you had a general medical examination? *One to two years*

(n) Do you have any chronic medical problems such as: diabetes, high blood pressure, heart disease, asthma, chronic lung disease, thyroid disease, sleep apnea, arthritis, liver

disease, esophageal reflux, urinary incontinence, kidney disease, seizures, or irritable bowel syndrome? *No*

(o) Have you ever had prostate gland trouble? *No*

(p) Do you EVER take any medication classified as a nitrate in any form, including amyl nitrate or poppers sometimes used as a recreational drug? *No*

(q) Do you ever take any medication classified as an alpha-1-adrenergic blocker including Cardura, Hytrin, Minipress, Flomax, Uroxatral, prazosin, doxazosin, tamsulosin, alfuzosin, or terazosin? *No*

(r) Over the past 2 weeks have you felt down, depressed, or hopeless? *No*

(s) Describe your health TODAY. *Good.*

(t) Describe your use of any type of tobacco. *Formerly used*

(u) How often do you have 6 or more alcoholic drinks on one occasion? *Never*

(v) Have you ever had a bowel movement test for blood done? (Two main uses for FOBT are to screen for early colon cancer or to look for cause of anemia. FOBT tests for presence of microscopic or invisible blood in the stool or feces.) *No*

(w) How long has it been since you last had your blood pressure checked? *Between 2 months and 1 year*

(x) Have you EVER had your cholesterol checked by a doctor, nurse, or other health care provider? *Yes*

(y) About how long has it been since you last had your cholesterol checked by a doctor, nurse, or other health care provider? *Over one year*

(z) Did you carefully complete the medical history and truthfully indicate what medications you are taking? *Yes, Truthfully*

(aa) Please list all medications you are taking, include both prescription or over-the-counter medications. If none, please enter 'none.' *Motrin, occasionally as needed*

(bb) Please list any serious illnesses you have or have had in the past. If none, please enter 'none.' *None*

(cc) Please list any allergies you have or have had in the past. If none, please enter 'none.' *None*

(dd) I hereby waive pharmacist counseling at this time. I understand that if I have any questions a pharmacist is available. *I understand.*

14. After completing this questionnaire, the investigator clicked on the "proceed to checkout" button and provided billing and shipping addresses and credit card information. On or about February 18, 2015, the investigator picked up a package at the shipping address she provided, which contained three tablets of Viagra. The box containing the tablets had a prescription label indicating that the prescribing doctor was Respondent. The fill date was February 12, 2015.

15. The standard of care for the prescription of Ella is to exclude the possibility of pregnancy prior to issuing such a prescription. Pregnancy, known or suspected, is a contraindication to the prescription of Ella. Posing as "Dana Taylor," the Board's investigator indicated that she did not know if she was pregnant or not. Respondent explicitly noted that he reviewed this online response, but he failed to act on it. Respondent failed to obtain a pregnancy test in order to conclusively determine whether the patient was pregnant. This failure represents an extreme departure from the standard of care.

16. The standard of care for the prescription of any drug is to evaluate the patient for whom the medication is intended, not a third party. Posing as "Dana Taylor," the Board's investigator indicated that she intended to obtain the Ella "for someone else." In an interview, Respondent stated that he "did not see" that response. Respondent's failure to thoroughly review the information presented to him by the website, and specifically to cancel the prescription of Ella in light of this response, represents an extreme departure from the standard of care.

17. The standard of care for the prescription of any drug requires an appropriate prior examination. The standard of care for the prescription of Viagra requires the physician to obtain a detailed history, including urological, neurological, cardiorespiratory, and psychological elements, and to make a good faith effort to confirm that history with physical examination. With respect to prescribing Viagra, an appropriate examination would be focused on determining the etiology of

the erectile dysfunction, and on excluding contraindications to the use of a phosphodiesterase inhibitor such as Viagra. The standard of care requires a genital examination be performed, to exclude anatomic defects and to detect previously undiagnosed hypogonadism. The standard of care requires that vital signs be taken, to exclude undiagnosed hypertension or arrhythmia. The standard of care requires that a cardiopulmonary examination be performed, to exclude previously undiagnosed valvular heart disease or underlying lung disease. The standard of care requires that a neurological examination be performed, to exclude peripheral neurological pathology (e.g., diabetic or alcoholic peripheral neuropathy.) The standard of care requires that a psychological history and physical examination be performed, to exclude psychiatric disease as an etiology for sexual dysfunction. For a new patient, measurement of serum creatinine is required prior to the prescription of Viagra to determine renal function. Respondent failed to obtain an adequate history or to perform any physical examination, thereby failing to perform an adequate examination with respect to his prescribing of Viagra. These failures, separately and collectively, represent extreme departures from the standard of care.

18. The standard of care for any patient encounter requires that the physician take steps to verify the identity of the patient. No such steps were taken on either occasion when the Board's investigator visited the www.kwikmed.com website. With respect to the prescription of Viagra, Respondent failed to confirm that the Board's investigator was indeed a man of a certain height and weight. The prescription of Viagra to an unknown patient of unknown demographics is dangerous, as Viagra is highly sought-after by some men, some of whom have been denied a Viagra prescription by their personal physician because of life-threatening contraindications. Respondent's failure to attempt to confirm the Board's investigator's identity is an extreme departure from the standard of care.

19. The standard of care for the prescription of Viagra is to determine whether the patient is a pilot. If so, the standard of care requires that the prescribing physician warn the patient not to perform pilot duties within eight hours of taking Viagra. Respondent's failure to determine whether the patient in this case was a pilot is an extreme departure from the standard of care.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

20. Respondent Richard J. Holmes, M.D. is subject to disciplinary action under section 2234, subdivision (c), in that he engaged in repeated acts of negligence. The circumstances are set forth in paragraphs 9 through 19, above, and are incorporated here by reference. Additional circumstances are as follows:

21. The standard of care for prescribing Ella requires an appropriate prior examination, including a detailed sexual and social history focused on excluding the possibility of a current pregnancy, screening for intimate partner violence, and screening for contraceptive sabotage. Respondent failed to take such a detailed sexual and social history. Additionally, Respondent failed to determine why the patient did not know whether she was pregnant. Respondent's failure to conduct an appropriate examination of the patient in this case prior to prescribing Ella is a departure from the standard of care.

THIRD CAUSE FOR DISCIPLINE

(Incompetence)

22. Respondent Richard J. Holmes, M.D. is subject to disciplinary action under section 2234, subdivision (d), in that he demonstrated incompetence. The circumstances are set forth in paragraphs 9 through 19, and 21, above, and are incorporated here by reference. Additional circumstances are as follows:

23. On or about May 25, 2017, Respondent participated in an investigative interview related to this case. During this interview, Respondent stated that the web questionnaire format is as good or better than an in-person patient encounter, as incorrect information may be provided to a physician in person, just as it may be on a website. Respondent stated that it is "frustrating for patients who want a prescription," who must visit a doctor's office "just so they'll prescribe a medication." Respondent characterized the Kwikmed website as "wonderful," and that the online histories taken as "very complete." Respondent stated, with respect to prescribing Viagra, that there is no need for a "general physical exam."

24. Respondent's statements demonstrate a profound misunderstanding of the purpose of taking a thorough medical history. That purpose is to determine the etiology of a medical problem, to exclude serious pathology that must be corrected, to educate the patient, and to provide safe and effective treatment. The circumstances of this case as set forth in paragraphs 9 through 14 demonstrate that the Kwikmed medical questionnaire is easy to deceive, does not provide an adequate medical history, and provides no opportunity for the prescribing physician to educate the patient. Furthermore, Respondent's statements demonstrate a lack of knowledge regarding the type of focused physical examination required in evaluation of erectile dysfunction, as opposed to a "general physical exam."

FOURTH CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs Without Examination)

25. Respondent Richard J. Holmes, M.D. is subject to disciplinary action under sections 2234, subdivision (a), 2242, and 2242.1 in that he issued prescriptions for dangerous drugs without an appropriate prior examination. The circumstances are set forth in paragraphs 9 through 19, and 21, above, and are incorporated here by reference.

NOTIFICATION OF VIOLATION AND IMPOSITION OF FINE

(Furnishing Dangerous Drugs Without Examination)

26. Respondent Richard J. Holmes, M.D. is subject to Imposition of a Fine under section 2242.1 in that he issued prescriptions for dangerous drugs without an appropriate prior examination, and is therefore subject to fines amounting to $25,000 per occurrence. The circumstances are set forth in paragraphs 9 through 19, and 21, above, and are incorporated here by reference.

27. Pursuant to this Citation, Respondent shall make payment to the Board in the amount of $50,000. Payment shall be made within 30 days of the effective date of this Notification. Payment shall be made to:

Medical Board of California
P.O. Box 15588
Sacramento, CA 95852

28. Respondent may request a hearing to challenge this Notification of Violation and Imposition of Fine. This Notification is final and effective fifteen (15) days from the date this Notification is served on Respondent, except that if Respondent should request a hearing within the fifteen-day period, the Notification shall not be final and effective until adopted by the Board following such hearing.

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 G 89434, issued to Richard J. Holmes, M.D.;

2. Revoking, suspending or denying approval of Richard J. Holmes, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Richard J. Holmes, M.D., if placed on probation, to pay the Board the costs of probation monitoring;

4. Imposing Fines upon Richard J. Holmes, M.D., in the amount of $50,000; and

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

DATED: September 19, 2017

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

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