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

In the Matter of the Accusation Against: **Guillermo Andres Cortes, M.D.** **Physician's and Surgeon's Certificate No. A 122415** **Respondent.**	**Case No. 800-2018-041289**

DECISION

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

This Decision shall become effective at 5:00 p.m. on June 12, 2020.

IT IS SO ORDERED May 14, 2020.

MEDICAL BOARD OF CALIFORNIA

By: _____
Ronald H. Lewis, M.D., Chair
Panel A

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In the Matter of the Accusation against:

GUILLERMO ANDRES CORTES, M.D.

Physician's and Surgeon's Certificate No. A 122415

Respondent

Agency Case No. 800-2018-041289

OAH No. 2018070965

PROPOSED DECISION

Thomas Heller, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 18 through December 2, 2019, in Los Angeles, California.

Christine R. Friar, Deputy Attorney General, represented complainant Christine Lally, Interim Executive Director, Medical Board of California (Board), Department of Consumer Affairs.

Peter R. Osinoff and Edward Idell, Bonne, Bridges, Mueller, O'Keefe & Nichols, represented respondent Guillermo Andres Cortes, M.D.

Oral and documentary evidence was received. At the end of the hearing, the record was held open for the submission of redacted copies of exhibits and a joint request for a protective order. The parties submitted those items by December 6, 2019, and the record was closed.

Thereafter, the ALJ requested that the parties lodge the transcripts of the testimony of certain witness. Respondent did so on January 3, 2020, and filed a Notice of Lodging of the transcripts. By order dated January 6, 2020, the ALJ reopened the record for the notice and lodging of the transcripts, and then reclosed the record and deemed the matter submitted for decision.

SUMMARY

Complainant alleges respondent sexually assaulted three physician coworkers while he was a cardiology fellow at the Keck School of Medicine of the University of Southern California. Respondent denies the allegations, contending that the alleged incident with the first accuser did not happen, and that the sex with the other two accusers was consensual, not sexual assault. Complainant proved by clear and convincing evidence that respondent sexually assaulted the first accuser, which warrants revocation of respondent's physician's and surgeon's certificate for unprofessional conduct. Complainant did not prove by clear and convincing evidence that respondent sexually assaulted the other two accusers.

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FACTUAL FINDINGS

Jurisdictional Matters

1. On August 9, 2012, the Board issued physician's and surgeon's certificate number A 122415 to respondent. The certificate is scheduled to expire on April 30, 2020.

2. On May 24, 2018, Kimberly Kirchmeyer, complainant's predecessor as the Board's Executive Director, petitioned ex parte for an order of interim suspension of respondent's certificate based the same allegations as in this case. ALJ Julie Cabos-Owen granted the petition on May 30, 2018, and set it for a noticed hearing. On June 11, 2018, respondent obtained a stay of the interim suspension from the Superior Court of California, County of Los Angeles, pending the outcome of the noticed hearing. ALJ Cabos-Owen held that hearing on June 11, 2018, and denied the petition on June 18, 2018.

3. On June 28, 2018, Executive Director Kirchmeyer filed an Accusation in her official capacity alleging that respondent committed gross negligence and unprofessional conduct by sexually assaulting three physician coworkers.

4. Respondent submitted a timely Notice of Defense dated July 12, 2018.

Respondent's Background

5. Respondent completed his medical training at Universidad El Bosque, Colombian School of Medicine, Colombia. After graduating in 2005, he completed a preliminary year in family medicine at Brooklyn Hospital Center in Brooklyn, New York. Respondent then completed a one-year research fellowship and an internal medicine

internship and residency at the Keck School of Medicine of the University of California (Keck), Los Angeles County + USC Medical Center (LAC+USC Medical Center). The LAC+USC Medical Center is a large public hospital in Los Angeles, California that is owned and operated by the County of Los Angeles, at which Keck faculty supervise the resident training programs. After the internship and residency, respondent was in the cardiovascular medicine fellowship training program at Keck/LAC+USC Medical Center from July 2014 until he graduated from the program in June 2017. He is board certified in internal medicine and cardiology.

6. Since July 1, 2017, respondent has been a Cardiac Electrophysiology Fellow at the University of California, Los Angeles (UCLA), David Geffen School of Medicine. On May 30, 2018, he was suspended from that position due to the interim suspension of his physician's and surgeon's certificate. Although the interim suspension was later stayed and dissolved, respondent has remained suspended with pay from his position at UCLA pending the outcome of this case. From about 2013 until May 2018, respondent also worked as a hospitalist at Arrowhead Regional Medical Center. He was fired from that position due to the interim suspension order.

Complainant's Case

M.Z. (ACCUSER NO. 1)

Background

7. M.Z. attended Keck and graduated with a medical degree in 2013. From June 2013 through June 2016, she was an intern and resident in internal medicine at Keck/LAC+USC Medical Center. In December 2015, she was matched with the cardiovascular medicine fellowship training program at Keck/LAC+USC Medical Center,

the same program in which respondent was a fellow. M.Z. is board certified in internal medicine.

8. M.Z. met respondent in 2012 while she was in medical school and he was an intern. They worked together at LAC+USC Medical Center and shared interests in cardiology and professional soccer. M.Z. initially thought respondent was physically attractive, but they never dated or had a sexual relationship. They occasionally sent messages to each other on Facebook Messenger and by text. When M.Z. was given her first cardiac rotation in 2012, she checked respondent's work schedule on AMION, an online schedule for physicians at the hospital, and saw that she and respondent would be working in the coronary care unit (CCU) at the same time. M.Z. messaged on Facebook, "Hey, I just checked amion and we have CCU at the same time! We should be on the same team. We can spend ALL DAY learning about the heart [smile emoji] [¶] September seems so far away [frown emoji]." (Exhibit 21.) Respondent replied, "Hahahaha, I hope we are in [*sic*] the same team . . . ." (*Ibid.*)

9. Beginning in September 2012, M.Z. and respondent were assigned to "sister teams" of residents, interns, and medical students at LAC+USC Medical Center. By then, respondent was a second-year resident and M.Z. was a fourth-year medical student. The sister teams worked cooperatively in caring for patients, and M.Z. testified respondent had the authority to assign work to her as a resident on her sister team. They had no negative interactions until an incident when respondent told M.Z. to write a transfer summary for a patient who was being moved to another floor. M.Z. refused because she had never taken care of the patient and considered the task to be "scut work," meaning that it was time-consuming and had no educational value. M.Z. testified her refusal angered respondent, and he ignored her for the rest of the four-week rotation, even when she approached him to ask questions about patient care.

She also testified that when she later became an intern, he started calling her lazy and asked her, "Are you going to do work?" or, "Why are you so lazy?" According to M.Z., she became upset and told respondent he needed to stop, after which their relationship at work returned to normal.

10. In early November 2013, M.Z. and respondent were both at an intern's birthday party celebration at the Rockwell Table and Stage (Rockwell), a local bar. M.Z. testified respondent was "very touchy and handsy" with her and grabbed her waist, put his hands in her pants pocket, put his hand around her shoulder, and let his hand lay on her breast. M.Z. squirmed and tried to get away, but respondent continued to touch and grab her, even after a stranger approached at one point and told respondent to let her go. M.Z. testified respondent stopped only briefly, and resumed the unwelcome advances after the stranger walked away. She also testified that respondent said he was going to kiss her, to which she responded, "No," and "Don't you dare." Respondent also invited M.Z. to go back to his apartment several times, but M.Z. declined.

11. Lavanya Wusirika, a friend of M.Z.'s, was at the Rockwell and observed some of respondent's behavior. Afterwards, M.Z. and Wusirika went to a friend's apartment and texted back and forth, while sitting next to each other, about how "touchy . . . [f]eely" respondent had been. M.Z. texted "I hate how this is turning out," and asked, "Did I look bad? Ugh I don't want to be part of gossip." Wusirika replied, "You didn't look bad. But looked like you guys were flirting like crazy." M.Z. stated she "was not trying to hook up with a guy who has a girlfriend," although later texting, "I think there was an attraction between us since I was an MS3 [i.e., a medical student] and he was an intern. . . ." M.Z. also texted that respondent had touched M.Z.'s butt and breasts and tried to kiss her, which Wusirika replied she had not seen. M.Z. asked

Wusirika, "Will the convo be 'Andres AND [M.Z.] were all over each other. Or Andres was all over [M.Z.]' . . . ." (Exhibit M.)[1] Wusirika texted, "Good question, I don't know what the convo would be like." (*Ibid.*) The next day, respondent messaged M.Z. on Facebook asking how she was and when she was going on a trip to Costa Rica. M.Z. replied she was fine and was leaving sometime the next week. Neither mentioned the previous night, and she and respondent never talked about it afterwards.

12. Respondent and M.Z. continued to correspond on Facebook through early December 2013. On December 4, 2013, M.Z. sent a Facebook message to respondent asking him where he had been matched for his fellowship, and he replied: "USC [wink emoji]. Thank u for asking. When r we going for dinner to celebrate?" (Exhibit 21.) M.Z. said, "Yay congrats!!! Anyone else get usc?", and did not respond to the question about dinner. (*Ibid.*) M.Z. testified respondent also invited her out two other times, but she was not interested and declined.

13. M.Z. also testified that respondent tried to kiss her twice in February 2014 after leaving an unstable patient's care to an intern and following M.Z. into a hospital elevator. According to M.Z., she turned away from respondent and covered her face, and ran out of the elevator as soon as it opened. She did not report the incident, testifying she was concerned she would be retaliated against because she was going into cardiology and respondent's half-brother, Leonardo Clavijo, was the director of the interventional cardiology program at Keck/LAC+USC Medical Center. In addition, Clavijo was a friend of David Shavelle, the cardiology program director.

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[1] Respondent generally goes by his middle name "Andres" rather than his first name.

14. In June 2014, M.Z. texted respondent, "Andres! It's [M.Z.]! Why are you off Facebook?" (Exhibit 22.) Respondent replied that he had closed his Facebook account, and the two texted each other a few times about work issues over the next few days.

Call Room

15. On November 17, 2015, M.Z. was working as a third-year resident on a nephrology consult service. M.Z. testified the nephrology consult service mistakenly included patients under respondent's care, and she sought out respondent on the fourth floor of LAC+USC Medical Center to relay an in-person recommendation that one critically ill patient needed fluids. M.Z. found respondent in the hallway watching a soccer game on his cell phone. As M.Z. started talking to him, respondent gestured for her to walk with him in the hallway. They walked toward a cardiology fellows' call room, a small windowless room on the hallway with a desk, telephone, computer, and twin bed.

16. M.Z. testified as follows about what happened next:

a. Respondent unlocked the call room door with a key and gestured for M.Z. to follow him inside. The door swung closed behind them. Respondent went straight to the desk and started to position his phone on it so he could watch the soccer game, while M.Z. stood at the end of the bed. After M.Z. briefly discussed the patient and turned to leave, respondent rushed over, got between M.Z. and the door, and placed his hand on the door, stopping her from leaving. He then placed his right hand on her buttock, and M.Z. said, "I can't believe you're doing this." Respondent then grabbed her by her upper arms and kissed her, forcing his tongue into her mouth. M.Z. broke free and started to try to push respondent off with her forearms.

She told respondent "No" and "Stop," but he kept touching her. She tried to shuffle away from him but got stuck between the desk and the bed with respondent in front of her. Using his right hand, respondent untied her scrub pants, put his hand inside her pants and underwear, and inserted his finger into her vagina, M.Z. said, "Get your hand out of there," but he did not and scratched her vagina. M.Z. again said "Get your hand out of there," and he finally did. He tried to kiss her again and got his tongue in her mouth, and M.Z. pushed him and tried to shuffle away, saying, "Please, let me go. Andres, stop. Let me go." He did not. Finally, respondent moved away and M.Z. grabbed the door and ran out. The attack lasted a total of about three to five minutes.

b. M.Z. went to a bathroom to collect herself, and then went to a different call room on the seventh floor. She tried to work for a while, but then texted respondent "Hey! Are you free a sec," and asked him to call her on a landline telephone? Her cellular phone did not have reception at the hospital for calls. Respondent called and M.Z. told him, "You know, what just happened can't happen again," or words to that effect. Respondent's first question was, "Can anyone hear you?" She said, "No, I'm in a call room," and he said, "Oh yeah, okay. Sure. Fine. That's fine," seemingly to brush off what happened.

c. M.Z. tried to resume working, but then broke down crying and texted Sarah Tomassetti, a friend and fellow resident. Tomassetti was working at the hospital and M.Z. went and spoke to her privately, describing what had happened. Tomassetti encouraged M.Z. to report respondent, but M.Z. felt she would be retaliated against because Clavijo was respondent's half-brother and a friend of Shavelle's. M.Z. decided to talk to respondent again and texted respondent to call her, but he did not reply that day. He paged her the next day and when they spoke by phone, M.Z. told him more forcefully that what he had done was wrong. Respondent

replied, "Oh, but you kissed me," and M.Z. said, "No, I didn't. All I said was 'no' and 'stop' and you didn't. What you did was not right. Don't ever touch me again." He paged her again that day and they spoke by phone a second time. Respondent said he was shaking and felt bad. M.Z. responded that he should imagine how she felt since she was the one who had been saying "stop" and he did not. She told him never to touch her again, and respondent said something like, "Oh, we're friends," and "please don't tell anyone."

Report of Assault, Investigations, and Lawsuit

17. M.Z. saw respondent at the hospital a few times over the next month or so, which made her uncomfortable. She did not seek medical attention. In late December 2015, M.Z. learned respondent planned to come to a retreat for Keck/LAC+USC Medical Center residents in Las Vegas, Nevada, although respondent was already a fellow. M.Z. had planned to attend the retreat and the idea of respondent being there upset her. By then, M.Z. had also been matched with the cardiology fellowship program at Keck/LAC+USC Medical Center, meaning that she would continue to see respondent at the hospital. Eventually, she decided to report the call room assault to Eric Hsieh, the program director for internal medicine at LAC+USC Medical Center, and to request a separate schedule from respondent at the hospital. M.Z. did so on February 18, 2016, and also described respondent's behavior at the Rockwell in November 2013.

18. After the report, respondent was placed on administrative leave with pay for three months while the Human Resources Department of LAC+USC Medical Center investigated. The investigation was later forwarded to the County Intake Specialists Unit of Los Angeles County, and the county also notified the City of Los Angeles Police Department. Before the county investigation ended, respondent was directed to return

to work with instructions not to have any unsupervised direct contact or communications with M.Z., unless an emergent medical case required it. Respondent subsequently graduated from the cardiology fellowship program in June 2017 and took his current position at UCLA.

19. The County Equity Investigation Unit of the Department of Human Resources of Los Angeles County also investigated, and presented findings to the County Equity Oversight Panel. The panel recommended to the Department of Human Resources that the claim of inappropriate conduct at the Rockwell be deemed substantiated, and the claim of sexual assault in the call room be deemed inconclusive due to insufficient information in the investigation to support it. After briefing from the panel, the Department of Human Resources concluded that only the allegations of inappropriate conduct at the Rockwell were substantiated by the investigation. The Los Angeles Police Department and Los Angeles County District Attorney's Office also conducted investigations, but no criminal charges have been filed concerning M.Z.'s allegations.

20. M.Z. testified she had difficulty dealing with the emotional effects of the assault and with respondent's presence at LAC+USC Medical Center after he returned from leave. She also felt retaliated against for reporting the assault. In December 2016, she filed a lawsuit against respondent, the County of Los Angeles, USC, and affiliated entities for sexual battery, harassment, and retaliation, which is still pending. On February 23, 2018, the Los Angeles Times published an article about M.Z.'s allegations and the lawsuit, which prompted the Board investigation that led to the present case. In March 2018, M.Z. began a leave of absence from LAC+USC Medical Center that ended up lasting just over one year. She did not complete her fellowship at Keck/LAC+USC Medical Center, and is now a cardiac research fellow elsewhere.

C.G. (ACCUSER NO. 2)

Background

21. C.G. is a board certified internal medicine physician. In the fall of 2014, she was in her first year of residency at Keck/LAC+USC Medical Center and did clinical rotations through various departments. She met respondent during a cardiology rotation when he was a first-year cardiology fellow. Respondent supervised C.G.'s work during that rotation.

22. C.G. testified her relationship with respondent was purely collegial at first, and then changed into a mutual romantic interest. According to C.G., they initially attempted to date, but never did so due to scheduling conflicts and because respondent did not value and respect her independence. Instead, they established a platonic friendship in which they spent time together outside of work. They never had a physical relationship, and at times would talk about relationships they wanted to pursue with other people. C.G. testified respondent may have tried to kiss her once in his apartment in late 2014, but she playfully rebuffed him.

Respondent's Apartment

23. In late January 2015, C.G. and respondent made plans for her to come over and swim at respondent's apartment complex. C.G. lived just a few blocks from respondent's apartment in downtown Los Angeles.

24. C.G. testified as follows to her recollection of events:

a. C.G. arrived at respondent's apartment during the day on January 20, 2015, and respondent made each of them a blended margarita with tequila. C.G. had not had any alcohol earlier that day. She took her drink down to the pool and the

two went swimming. After a while, they returned to respondent's apartment, she drank a second margarita that respondent made, and they then went down to the Jacuzzi area in another building in the apartment complex. To get there, they walked on a bridge in the complex over Cesar Chavez Avenue/Sunset Boulevard. They swam a little in the pool at that area and then went into the Jacuzzi. Respondent tried to kiss C.G. in the pool and she thinks he was successful, but she also pushed him away. She became very intoxicated and remembers talking, singing, and dancing at the Jacuzzi, but not much else.

b. The next thing she remembers, C.G. woke up naked from the waist down in just a bikini top, with him on top of her and his penis in her vagina. She had been unconscious and was not really able to speak or move initially. She has no memory of taking off her bikini bottom or of consenting to sexual intercourse. She also had not come over intending to have sex with respondent, and had not consented to sex with respondent on any other occasion.

c. C.G. waited until respondent went to the restroom, after which she threw on shorts and a tank top, grabbed her flip flops and purse, and ran out of the apartment. She does not remember if she found the bottom of her bikini, but had the top on at all times. C.G. thinks respondent chased after her and followed her into the elevator, but she jumped out before the elevator door closed. C.G. ran down a stairwell into a street onto Cesar Chavez Avenue and started to walk home. It was dark and she did not want to walk through an underpass beneath the 110 Freeway due to homeless people in the underpass. Respondent pulled up alongside her in his car as she was walking. Still intoxicated, C.G. decided to get into his car because she thought it was somehow safer than the underpass, and respondent drove her home. C.G. remembers yelling at respondent and crying during the ride, but nothing else. When respondent

dropped her off at her apartment, C.G. slammed the passenger door, said she did not want this, and ran inside.

d. C.G. immediately called a friend, Gil Rogoff, with whom she had dinner plans that evening. Crying, she told him what had happened and canceled their plans.

Interactions at Work and Report of Assault

25. C.G. testified she ran into respondent in the hospital cafeteria the following week, but did not want to talk to him. She got the impression respondent was upset with her because she was upset with him. They never talked about what happened afterwards and he never apologized to her. At some point, she had to talk to him about a patient, but kept the conversation professional. She did not seek medical attention because she did not think any was required, and did not report the assault to anyone at LAC+USC Medical Center because it happened off campus.

26. C.G. filed a police report of the incident about three years later in January 2018, after completing her residency. By then, C.G. had been approached by M.Z., who asked if C.G. had experienced anything with respondent similar to M.Z.'s assault. M.Z. encouraged C.G. to come forward, and C.G. felt that reporting respondent's assault would help show a pattern of behavior in M.Z.'s case. C.G. told police she did not think respondent drugged her, and also that she believed respondent thought they had consensual sex because she could not say one way or another whether she consented.

27. No criminal charges have been filed regarding C.G.'s report of the assault. C.G. now works as a physician elsewhere. She has not filed a lawsuit concerning the incident.

A.S. (ACCUSER NO. 3)

Background

28. A.S. met respondent in July 2016 when she began training at Keck/LAC+USC Medical Center as a first-year cardiology fellow. Respondent was a third-year cardiology fellow and had the authority to supervise A.S.'s work in certain instances, such as invasive procedures where he was assigned as her senior fellow or co-fellow. Over the next few months, their relationship evolved into a friendship that extended outside of work. They also communicated frequently by text message, often in Spanish.

29. Early in their relationship, A.S. invited respondent to her apartment after she passed her internal medicine medical boards before going out together to celebrate. A.S. testified the two were just having drinks and talking when respondent quickly unzipped her dress and starting fondling her, saying that he wanted to be "friends with benefits," meaning friends who were also physically intimate. According to A.S. she quickly zipped up her dress and replied she was happy with her benefits from Los Angeles County. The two then went out and had an enjoyable evening, but A.S. testified the experience left her in shock and lost about what reaction to have.

30. In early October 2016, a group of people, including respondent and A.S., went to an Oktoberfest party in Torrance, California. There were hundreds of people at the party and A.S. was enjoying socializing. According to A.S., respondent became enraged that she was talking to other men, and squeezed her fingers so hard she thought they might break.

Pharmaceutical Dinner

31. In late October 2016, the cardiology fellows at Keck/LAC+USC Medical Center were invited to a pharmaceutical dinner that both A.S. and respondent attended. A.S. testified she became intoxicated at the dinner and that respondent raped her at his apartment afterwards, describing what happened as follows:

a. A.S. consumed much more alcohol at the dinner than she normally would, and became extremely intoxicated. She was wobbling and feeling very unwell. Some of A.S.'s co-fellows put her in a car, and her next recollection was being in respondent's apartment. She believes respondent was also in the car. She had not been to respondent's apartment before, and did not intend to go there that night because she was scheduled to work at the hospital early the next morning.

b. Upon arriving, A.S. went into the bathroom, locked the door, and vomited for hours. She was laying on the bathroom floor and remembers getting vomit in her hair and on her clothes. Respondent was not in the bathroom during any of that time.

c. After A.S. finally stopped vomiting, she came out of the bathroom and laid down on respondent's bed with her clothes on. Respondent appeared, forcefully took off her pants and underwear, got on top of her, and raped her. They had not had sexual intercourse before, and had kissed only once or twice before that night. A.S. told respondent to stop multiple times both in English and Spanish, but he would not. Finally, she told him she would vomit if he continued to pound on her, and he stopped. After that, she slept on the bed for about 45 minutes to one hour, and then took an Uber back to her apartment to get ready for work.

Subsequent Relationship

32. A.S. testified she considered reporting the rape, but could not come to terms with it at that point, thinking it was impossible for what had happened to be what she thought it was. Instead, she continued to get closer to respondent, thinking that their relationship would change. She described another night when respondent asked her to go back to his apartment to watch a movie after drinks or dinner, they were enjoying the movie, and then respondent began having sex with her. A.S. "found it strange" but also "sort of thought . . . this is normal. This is – it's acceptable." She did not resist or tell respondent to stop.

33. A.S. also testified respondent abruptly put his hands down her pants and touched her vagina after they had hugged in a parking lot at LAC+USC Medical Center. According to A.S., respondent did so without warning and said it was because she kissed him.

Soccer Game Viewing

34. A.S. testified respondent raped her again at his apartment in April 2017, describing what happened as follows:

a. In the middle or end of April 2017, respondent invited A.S. to watch a soccer game with him. Respondent picked her up and brought her to his apartment, and two of respondent's friends joined them a short while later. Respondent served A.S. a lot of alcohol, and the four of them watched the entire game. A.S. had five or more drinks and began kissing respondent on the couch while his friends were still there. Later on, as she and respondent were kissing and "in the moment," A.S. looked around and respondent's friends were gone. Respondent stood up, grabbed A.S.'s hand, and dragged her toward the bedroom.

b. A.S. told respondent she did not want to do anything, was menstruating, and was not interested in having sex. Respondent dragged her into the bedroom anyway, took off her pants, and had sex with her. She was crying, and respondent said, "Don't cry. . . . I know I'm your senior now, but soon when I'm not your senior, things will be different." A.S. said she did not want to have sex like this and verbally told him no, but he continued anyway. Eventually he finished and stopped; A.S. does not know if he ejaculated. A.S. went home that night.

35. The evening of April 11, 2017, A.S. sent respondent a text message in Spanish, which she translated during the hearing as, "Thank you for being so nice. I was at the point of dying and you didn't even fucking care." A.S. testified she was referring to having to go to the emergency room for strep throat shortly after the soccer game viewing, and respondent refused her request to drop her off or pick her up. Over the next few days, the two sent texts back and forth about how respondent had treated A.S., with A.S. stating she was a "drunk one night stand" for respondent, and respondent stating it was her decision to "start[] everything to the point my friends decided to leave," which A.S. denied. (Exhibit 35.)

Chicago Trip

36. After the argument, A.S. and respondent resumed texting each other in late April 2017. In mid-May 2017, both A.S. and respondent were in Chicago, Illinois for a cardiology conference. A.S. testified respondent raped her again one morning in her hotel room in Chicago, describing the rape and subsequent events as follows:

a. A.S. saw respondent in Chicago on May 11, 2017. Respondent invited himself to her hotel room that morning because his room was not ready. When he arrived, A.S. was dressed and almost ready to leave. Respondent undressed to his

boxer shorts and got under the covers in the bed, and then began commenting on her breasts, stating "Oh my God, your boobs are huge." He sprang up out of the bed and pushed her onto it. Holding her hands behind her head, respondent removed her pants and began thrusting his flaccid penis over and over against her body. He eventually became erect and raped her. A.S. told him to stop and that she did not want this, but respondent continued without looking at her. She tried to resist him physically but could not because he held her down. A.S does not know how long the rape lasted, but it must have been five minutes or more. She does not know if respondent ejaculated.

b. Afterwards, respondent got off of A.S. and held her next to him, and would not let her go. He fell asleep and A.S. stayed in bed with him. When he woke up, there were in bed talking, and at some point had sexual intercourse. A.S. had no objection to that sexual encounter. In the late afternoon, she and respondent left together and walked back to his hotel to check him into his room. They later went to dinner with the other cardiology fellows.

37. The next day, A.S. and respondent went to a dinner for USC cardiologists. According to A.S., respondent began showing her cell phone pictures of women in whom he was romantically interested, which made her feel violated emotionally and physically. She left the dinner, texting later that she felt "so used" and that "you'll never get anything from me if you don't force yourself." Respondent replied, 'What drama with 2 drinks," and tried to convince A.S. to go out dancing. (Exhibit 35.) She declined, but the two continued texting back and forth about ending their friendship. A.S. avoided respondent the rest of the trip.

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Report of Assault and Lawsuit

38. A.S. testified she reported respondent to a Los Angeles rape hotline immediately after returning from Chicago. Shortly afterwards, she contacted M.Z. and first learned that M.Z. had accused respondent of sexual assault. M.Z. was the only other female cardiology fellow in the same class as A.S., and A.S. reached out to her because A.S. had noticed that respondent and M.Z. avoided each other at work.

39. A.S. and respondent started texting each other again in late May and June 2017. In one exchange, A.S. accused respondent of forcing himself on her, which he denied. In 2019, A.S. filed a lawsuit against respondent, Los Angeles County, and USC concerning respondent's assaults. No criminal charges have been filed against respondent to date concerning A.S.'s report of the assaults. A.S. no longer works at LAC+USC Medical Center.

SARAH TOMASSETTI

40. Tomassetti is a physician and former colleague of M.Z. at Keck/LAC+USC Medical Center. She met M.Z. in the first week of medical school around August 2009, and the two became close friends. Tomassetti testified she texted and met with M.Z. after the call room incident with respondent on November 17, 2015, and M.Z. was distraught during the conversation and crying by the end of it. Tomassetti also testified it was normal for physicians to consult with each other in person at LAC+USC Medical Center.

LAVANYA WUSIRIKA

41. Wusirika was a psychiatry resident at Keck/LAC-USC Medical Center from 2013 through 2016. She met M.Z. in medical school in about 2009, and the two were

close friends in medical school and during their residencies. Wusirika testified respondent was touching M.Z. "all over" her body during the party at The Rockwell, with his hands on her back and over her shoulder. He appeared to be trying to pull her closer, and M.Z. squirmed away and moved closer to Wusirika, looking fearful and anxious. Wusirika did not observe respondent try to kiss M.Z. or touch M.Z.'s butt or breasts, but she was not with M.Z. the whole time. Wusirika did hear respondent invite M.Z. back to his apartment; he was insistent and invited Wusirika as well, but she and M.Z. both declined.

BOARD INVESTIGATORS

42. Investigator Faren Taffere and Supervising Investigator Carmen Aguilera-Marquez testified about the Board's investigation of the charges against respondent. The investigation included recorded interviews of the three accusers, and interviews of Tomassetti, Wusirika, and other witnesses. It did not include an interview of respondent. Taffere obtained two affidavits that respondent prepared during the county investigations, but they only concerned M.Z.'s allegations. Taffere did not request to interview respondent or seek any information from him about C.G.'s or A.S.'s allegations.

EXPERT WITNESSES

43. Suzanne Fidler, M.D., J.D., is board certified in internal medicine and a certified professional in healthcare risk management. She has extensive work experience in risk management and patient safety issues, including at hospitals. Fidler testified that physicians are expected to maintain appropriate conduct and behavior and adhere to professional boundaries with both patients and colleagues, and that there is a direct correlation between disruptive behavior by physicians and patient

safety. Assuming the truth of the accusers' allegations, Fidler opined that respondent's conduct was an extreme departure from the standard of care for physicians and a risk to patient safety.

44. Mindy Mechanic, Ph.D., is a licensed clinical psychologist, and recently retired from the faculty of California State University, Fullerton. She has researched, written, and testified extensively on intimate partner abuse, sexual assault, and stalking. She described "counterintuitive victim behavior," which is a label created by prosecutors to describe an array and catalog of behaviors that one would not expect from victims of sexual assault.

45. Mechanic testified that one common misconception about sexual assault or rape is the belief that a victim would violently resist the attacker. In most cases, strenuous or violent resistance is not observed, and freezing is a common and adaptive reaction, particularly in cases of a known (i.e., a non-stranger) attacker. Another common misconception is that a victim of a known attacker would never seek out continued physical or sexual contact with the perpetrator. In reality, a surprising number of victims of sexual assault continue to have social or sexual contact with the perpetrator after such an attack. Another misconception of lay persons is that incidents of sexual assault will be reported to police, when in reality most sexual assaults are not. Victims of known attackers in particular sometimes have difficulty labeling the event, and want to disbelieve it, move past it, or make it go away. In addition, female victims of known attackers do not typically seek medical attention for evidence collection, such as a sexual assault examination. Like Fidler, Mechanic assumed the accusers' accounts were true; she never met or interviewed the accusers or respondent.

Respondent's Case

RESPONDENT'S TESTIMONY

46. Respondent denied all of the sexual assault allegations. With respect to M.Z., respondent testified he barely remembered the incident when M.Z. refused to write a patient transfer summary. He does not remember treating her differently than other medical students afterwards, and does not remember ignoring her or refusing to answer her questions. But he does think he called her lazy once in front of others in the intensive care unit at the hospital. At the time, he still had it in his mind that M.Z. did not want to work with a team.

47. Regarding the birthday party at the Rockwell, respondent testified he spoke to M.Z. for about an hour and a half or two hours about soccer and other subjects. He had about five drinks and was "a little tipsy," but not drunk. He had his arm on her shoulder and her arm was around him while they were talking and drinking, but that was all. Respondent testified that type of affection between two people is common in similar settings in Colombia or Latin America. He denied touching her breast or butt or trying to kiss her. He also does not remember inviting M.Z. to his apartment, but other people went home with him and he also had a visiting female friend who was sleeping on his couch. Therefore, M.Z. would not have been alone with him even if he did invite her.

48. Respondent testified he did not socialize with M.Z. outside of work except at the Rockwell, had no interest in doing so, and was not at all attracted to her. He also denied he followed M.Z. into an elevator to kiss her, or ever left the bedside of an unstable patient. According to respondent, the elevator incident never happened. In addition, respondent testified he never invited M.Z. out on a date, describing his

text about "When r we going to dinner to celebrate" as referring to a group celebration for residents who had matched with fellowship programs.

49. Respondent also denied assaulting M.Z. in the call room, testifying that what happened was as follows:

a. It was a regular day for respondent, and M.Z. was not on his team. He came to the hospital around 7:30 a.m. At 11:45 a.m., he went to a cardiology conference in the hospital. He finished the conference around 1:15 p.m. and walked into CCU while he was watching a soccer game on his cellphone. M.Z. arrived in the unit and was asking respondent about her cardiology fellowship application, not about a patient. It was very uncommon for a fellow to receive an in-person recommendation from a resident on a different team; the resident usually communicated by pager or called a "VOIP" phone in the cardiology unit. Respondent wanted to go into the call room to watch the soccer game on his phone.

b. Respondent entered the call room and sat down, and M.Z. walked in behind him. The door closed on its own, and every resident or fellow had a key to unlock the hallway side of the door. The door could not be locked from the inside. Respondent remained seated while he was watching the game, and M.Z. was asking him about her cardiology fellowship application to USC. Respondent was telling her that he did not think a match at USC would be good for her because she was always involved with research, and USC's cardiology fellowship program was more of a clinical program. His statement may have been more like, "USC is not for you." He was into the soccer game at the time, and never touched M.Z. He has never attacked or sexually assaulted anyone. When they talked on the phone afterwards, M.Z. was "kind of upset" due to what he had said, and asked him why he thought she was not good for USC. He

told her it was just about the research issue, but said it was her decision in the end. They did not talk about anything related to a claimed assault.

50. Regarding C.G., respondent acknowledged some initial attraction between them. But later, they were "kind of like friends" and would "just talk and hang out and talk about everything." Respondent denied sexually assaulting C.G., testifying that the two had consensual sex at his apartment. He described what happened as follows:

a. Respondent and C.G. made plans by text for her to come to the pool at his apartment complex. He was not romantically interested in her when she came to the apartment, and did not plan to have sex with her. It was winter, but the weather was nice. C.G. and respondent drank margaritas in the apartment, and C.G. did not have more than two drinks. They went to the pool in his apartment building, but at 4:00 p.m. or so one of the other buildings in the complex was blocking the sun, so they then went to a bigger pool and Jacuzzi in a different part of the complex that was farther away. C.G. and respondent were talking, listening to music, and dancing, especially at the Jacuzzi.

b. C.G. and respondent were in the Jacuzzi for an hour or an hour and a half. At some point, C.G. began making comments that she did not shave and put respondent's hand on her leg, and then inside the bottom of her bikini, saying "You see, I didn't shave." Respondent laughed and said he was fine with that. C.G. sat in his lap at the Jacuzzi and the two were kissing. C.G. did not push respondent away.

c. The two got out of the Jacuzzi, C.G. put her towel and flip flops on, and walked back to respondent's apartment. It was a seven or eight-minute walk back to the apartment, during which they walked through the pool area and gardens, up

and down stairs, over a bridge, and inside apartment buildings. C.G. was fine during the walk and showed no signs of unsteadiness on her feet or intoxication. They were not holding hands during the walk.

d. After entering the apartment, respondent and C.G. walked into the bedroom. C.G. was standing on the frame of respondent's bed, and the two were kissing and things were escalating to where they were going to have sex. Respondent said, "I'm very particular about my bed. Let's take a shower first." Respondent walked into the bathroom and told her to follow him, but she did not shower with him because "I guess she didn't want cold water or something like that." Respondent showered quickly and came out in a towel, and she showered next and came out naked. She tried to perform oral sex on him and he said "No," and then she told him to perform oral sex on her, which he did. The two then had unprotected sexual intercourse. At one point during intercourse, respondent got cramps in his legs and got up to turn on a light, but C.G. told him to turn it off. She never gave respondent the slightest indication she did not want to have sex, and never lost consciousness.

e. Afterwards, C.G. and respondent were lying in bed naked, and C.G. asked respondent what was going to happen with them now. Respondent did not want a relationship with C.G., because she had made comments before about getting drunk and sleeping with other men, saying things in Spanish like "I'm such a whore. I'm such a bitch." Respondent told C.G. nothing was going to happen with them, stating that he did not want to have anything to do with someone who is always drunk and a "perra," the Spanish word for whore. Respondent had heard C.G. refer to herself that way and did not mean to be offensive, thinking the two were "kind of like joking and talking."

f. C.G. became very upset, and respondent apologized immediately. C.G. then said she wanted him to take her home, and he apologized again while driving her home. She did not say anything in the car and slammed the door when exiting, which upset respondent. They never had a sexual encounter again, and just maintained a professional relationship.

51. Regarding A.S., respondent testified she wanted him to be her boyfriend, even though he made clear to her repeatedly that he wanted to be just friends. But even though he made that clear, A.S. created all kinds of occasions with respondent to try to become more than friends, where "a couple times it happened, and we ended up having sex." With respect to the Oktoberfest party, respondent testified he was never jealous of A.S. talking to other men, and did not squeeze her hand. He also denied A.S.'s claim that he put his hands in A.S.'s pants in the hospital parking lot on a different occasion.

52. With respect to the sexual assault allegations involving A.S., respondent testified as follows:

a. At the pharmaceutical dinner, respondent and A.S. were both drinking, and respondent got drunk that night. After the dinner, A.S. requested an Uber for both of them, and just got out with respondent when it arrived at his apartment. They attempted to have consensual sex, but he could not get an erection because of how much he had to drink. A.S. was not throwing up at the time. Respondent then went to bed and woke up at about 5:30 a.m., and A.S. was still there in bed next to him with her clothes on. When he went to the restroom, it was apparent she had been vomiting. They did not try to have sex again in the morning when he woke up.

b. Regarding the soccer game viewing, he and A.S. started kissing, and she willingly went with him into the bedroom. He did not have to persuade her, drag her, or exert any force to get her do so. His friends were still at his apartment when he and A.S. went to the bedroom. They had consensual sex, and A.S. gave no indication that she did not want to have sex. While he and respondent were still in the bedroom, respondent's friends yelled that they were leaving, and respondent and A.S. got out of bed quickly and came out to say goodbye to them. Respondent does not remember whether A.S. stayed the night or left the apartment after that.

c. Regarding the Chicago trip, respondent arrived early in the morning before his room was ready, and A.S. invited him to stay in her room. He accepted, and she was wearing pajamas when he arrived. She got into bed with him, they were kissing, and then had consensual sex. He did not pin her arms behind her head, and she never said no to him during the encounter. He slept for about two hours, and woke up and felt his penis in A.S.'s hand. Respondent asked A.S. what she was doing, and she said, "Well, I have to work with what I have." A.S. climbed on top of him and they had consensual sex again. Respondent and C.G. then spent most of the day together, and at some point had the same "boyfriend/girlfriend" conversation they had had before, which was that she wanted that type of relationship and respondent did not. At a group dinner at a restaurant on May 12, 2017, A.S. became furious at him for texting a kiss or heart emoji to another woman, and got up and left. She and respondent did not have sex again, but continued to work together with no impact on patient care.

JAIR STEVEN GOMEZ AND JUAN OCAMPO

53. Jair Steven Gomez and Juan Ocampo are respondent's friends and were at his apartment for the soccer game viewing with A.S. Gomez testified A.S. was

holding hands with respondent when they walked from the living room into the bedroom, and expressed no reluctance to enter the bedroom. Ocampo also testified A.S. did not resist. Neither of them heard any shouts or raised voices in the bedroom. After a while, Gomez and Ocampo announced they were leaving, and both A.S. and respondent came out of the bedroom at the same time to say goodbye. They were both clothed and smiling.

54. Gomez and Ocampo also testified respondent was always respectful with women, and was a person of honesty and integrity.

DAVID SHAVELLE

55. David Shavelle is the cardiologist responsible for supervising all cardiology services provided at LAC+USC Medical Center. He met respondent before respondent's internal residency training and knew him professionally throughout respondent's cardiology fellowship. Shavelle testified the allegations against respondent were out of character, and described respondent as having superior interpersonal skills and professionalism. Respondent's knowledge base as a cardiology fellow was in the upper 10 or 15 percent of all fellows, and he had a good reputation for honesty and integrity.

DONNA WAGNER

56. Donna Wagner is an investigator in USC's Office of Equity and Diversity, which investigated complaints made by A.S. and M.Z. to that office. A.S.'s initial complaint in December 2017 was about gender discrimination, and did not include anything regarding respondent. On April 23, 2018, A.S. broadened the complaint to allege that respondent sexually assaulted A.S. on five different occasions. Wagner investigated and determined that there was no disruption of the workplace that

impacted work or patient care with respect to A.S.'s complaint. The Office of Equity and Diversity's investigation of M.Z.'s complaint concerned her claim of retaliation, and is still pending. The county conducted a separate investigation of M.Z.'s sexual assault allegations.

EXPERT WITNESS

57. Mark Mills, M.D., J.D., is a psychiatrist who is board certified in psychiatry and forensic psychiatry. He is licensed to practice in Maryland and Virginia, but his California license is currently inactive. Mills interviewed respondent in December 2018 and administered the Minnesota Multiphasic Personality Inventory-2 to respondent. He also gave respondent the Personality Assessment Inventory to take home to complete.

58. Based on the interview and assessment results, Mills opined that respondent has no major mental disorder of any kind. He did not appear to be psychotic, antisocial, substance-abusing, impulsive, paranoid, or aggressive. The assessment results indicated respondent was somewhat defensive, but did not evidence psychopathology. However, the assessments did not specifically address sexual acting out as alleged in the Accusation.

OTHER EVIDENCE

59. When he was young, respondent's left arm was injured in a vehicle accident, which resulted in decreased strength and flexibility in that arm and decreased dexterity in his left hand. The decreased strength and dexterity do not affect his ability practice of medicine, and he has no other physical limitations. He is six foot three inches tall and weighs about 195 pounds.

60. During the Los Angeles County investigations, M.Z. deleted over 90 text messages in her text conversation with Wusirika about what happened at the Rockwell, and the county was not informed of the full text exchange. Instead, M.Z. provided an affidavit that quoted excerpts of the altered text exchange, with no indication in the affidavit that texts were missing from the excerpts. M.Z. kept screenshots of the full text exchange, but those were not produced until much later in the civil action. The texts that M.Z. deleted included messages to Wusirika such as: ""So I'm thinking I should have done a better job deflecting [respondent] . . . ;" "I think he had too much to drink. I did too. But obviously nothing happened. I made that super clear that nothing would;" ". . . The thing is I think there was an attraction between us since I was an MS3 and he was an intern;" "It's hard to deflect that hard when there is that underlying attraction even if I don't think I would get with him even without a gf;" and many others. (Exhibit M.) M.Z. also deleted texts from Wusirika to her, including a text stating that Wusirika had not seen respondent touch M.Z.'s butt and breasts, and the text stating, "You didn't look bad. But looked like you guys were flirting like crazy." (*Ibid.*)

61. According to M.Z., she deleted the texts at her attorney's instruction. When questioned about the deletions, M.Z. denied she was trying to be dishonest with the county, testifying she was trying to "basically convey what had happened that night without kind of putting any distraction," and did not want to be "victim-shamed and blamed for everything." She also testified she gave her former attorney the screenshots of the full exchange long before they were produced in the civil action and told the attorney to disclose them.

62. Tomassetti testified she knew C.G., and that C.G. had told her nothing had happened with respondent. The conversation took place several months after M.Z. told Tomassetti what happened in the call room in November 2015.

63. C.G. testified she had blacked out from alcohol consumption between five and 10 times before the assault at respondent's apartment, but had not heard any reports that she acted like she blacked out on those occasions. Respondent was not aware of those blackouts, and she had never blacked out before around him. C.G. had also taken the prescription drug fluoxetine that day, which she acknowledged has the potential to impair judgment, thinking, or motor skills. However, C.G. attributed her behavior to alcohol intoxication rather than the medication.

64. A.S. and respondent texted each other hundreds of times between September 2016 and June 2017, and respondent saved the texts because he saved all of his texts, emails, and photos after he was accused of assault by M.Z. A.S.'s texts to respondent ranged from expressing love for him to stating that he had forced himself on her, which respondent denied. A.S. and respondent also exchanged texts about work, the possibility of traveling together, and everyday matters, much of it lighthearted. They usually texted each other in Spanish.

65. Just before the pharmaceutical dinner, A.S. texted respondent about drinking at the dinner and whether they should take an Uber to get there. Respondent replied that he did not plan to drink much, and A.S. texted, "I'm thinking about drinking a little more," and "maybe I want to have you drunk and then, you know." Respondent replied "Hahaha," and A.S. texted, "yes [smile emoji] taking advantage from this strong friendship [¶] don't you think so?" (Exhibit R.) The morning after the dinner, they texted each other about how tired they were, with no mention of an assault. (*Ibid.*)

66. With respect to the soccer game viewing, the text messages indicate respondent invited A.S. over on March 28, 2017. After accepting the invitation, A.S. texted "Then I'll greet ricci ;)" (Exhibit 35), which A.S. testified was the name A.S. used to refer to a sex toy. The day after the soccer game viewing, A.S. texted respondent pictures of the evening, and did not mention an assault. Over the next few days, she texted respondent about how much she would miss him when he left for UCLA, and expressed ideas for a romantic relationship.

67. Before traveling to Chicago, respondent texted A.S. to ask where she was staying, and she replied "with you!" On May 10, 2017, when A.S. was already in Chicago, she texted respondent, "I'll see you tomorrow handsome." (Exhibit 35.) When respondent arrived, her texts indicate she invited respondent to her hotel room, rather than respondent inviting himself as A.S. testified. After the group dinner the next night on May 12, 2017, A.S. sent respondent dozens of texts, including one accusing respondent of forcing himself on her. In reply, respondent denied he did so and told A.S. not to contact him anymore. A few days later, A.S. texted, ". . . I'll miss you and thank you very much for everything, although it has been very difficult, you helped me and I will always remember our good moments. I felt very much alone but I had you . . . now we're not going to fight anymore. good luck with everything handsome." (Exhibit 35.)

68. Respondent also presented positive performance reviews, letters of recommendation, and summaries of his performance as a cardiology fellow describing his superior skills as a physician. He also submitted declarations from friends and colleagues describing him as respectful, kind, polite, and professional.

Analysis of Evidence

ALLEGATIONS CONCERNING M.Z.

69. With respect to M.Z., the allegations in the Accusation concern just the call room incident, not what happened at the Rockwell or on any other occasion. M.Z. and respondent gave markedly different accounts of what happened in the call room, with M.Z. describing a several-minute sexual assault, and respondent testifying he did not touch M.Z. at all.

70. Complainant proved by clear and convincing evidence that respondent sexual assaulted M.Z. in the call room. M.Z.'s testimony about the assault was detailed, and her straightforward demeanor in describing it supported her detailed account. M.Z. also told her friend Tomassetti about the assault immediately, which further supported M.Z.'s account. Tomassetti's demeanor and manner of testifying were open and believable in relating M.Z.'s disclosure and distress. In addition, M.Z.'s testimony about her increasingly forceful phone conversations with respondent after he initially seemed to brush off what had happened was believable.

71. Furthermore, the evidence presented did not reveal a plausible motive for M.Z. to fabricate the call room assault. The prior negative interactions between M.Z. and respondent occurred well before the call room incident, and did not establish a motive for fabrication. The "scut work" conflict took place in 2012 or 2013, and the Rockwell incident took place in November 2013. Respondent's alleged attempt to kiss M.Z. in a hospital elevator in February 2014 was nearly two years before the call room incident. It is unlikely those past events would have prompted M.Z. to fabricate a claim of sexual assault in November 2015.

72. In respondent's account of the call room incident, he testified he told M.Z. that USC was not the right place for her to do her cardiology fellowship, and he suggests the statement may have motivated M.Z. to fabricate the assault. But it is hard to believe such a statement would motivate M.Z. to fabricate a sexual assault claim against him. M.Z. also has a lawsuit pending against respondent, the County of Los Angeles, USC, and affiliated entities for sexual battery, harassment, and retaliation, in which she requests damages for the assault and alleged retaliation against her for reporting it. But nothing in the record suggests she fabricated the assault in order to benefit financially.

73. Respondent notes that the County of Los Angeles' investigation of the assault was inconclusive, but that investigation did not involve a full evidentiary hearing. Respondent also points to M.Z.'s admission that she was initially attracted to respondent, and argues that M.Z. "stalked" him by checking his hospital schedule in 2012 and asking why he was off of Facebook in June 2014. But searching once for respondent's hospital schedule and once for his Facebook account two years later hardly amounts to stalking. In addition, Wusirika persuasively corroborated M.Z.'s testimony that M.Z. did not welcome respondent's physical advances at the Rockwell. M.Z. also did not respond to respondent's dinner invitation after he matched with USC for his cardiology fellowship in December 2013. This evidence supported M.Z.'s testimony that she was not interested in a romantic relationship with respondent, and did not have an unrequited interest in him as he suggests.

74. Respondent argues that M.Z. lacks credibility because she "manipulated evidence and lied under oath" in the county investigations and civil lawsuit concerning her texts with Wusirika about the Rockwell. (Respondent's Trial Brief, p. 7.) Considering the evidence on this issue, M.Z.'s conduct regarding the texts does negatively impact

her credibility. M.Z. deleted over 90 text messages with Wusirika about the Rockwell incident, and the county was not informed of the full text exchange. The deletions included texts in which M.Z. noted her initial attraction for respondent, blamed herself for not "doing a better job deflecting" his advances, or stated something else she believed could "distract" from her account of respondent's unwanted behavior that night. M.Z. then provided an affidavit to the county that quoted excerpts of the altered text exchange, with no indication that texts were missing from the excerpts. M.Z.'s concern about possible victim shaming was not an excuse for this conduct, and her former attorney's role in the conduct also does not excuse it.

75. At the same time, the deleted texts between M.Z. and Wusirika were not about what happened in the call room. In addition, some of respondent's own testimony about his attitude and behavior toward M.Z. was not credible. Respondent's testimony that he was not at all attracted to M.Z. was belied by his behavior at the Rockwell. M.Z.'s and Wusirika's testimony established that respondent made physical advances toward M.Z. at the Rockwell, despite respondent's denial that he did so. Respondent's claim that he was only touching M.Z. like friends commonly do in similar social settings in Colombia or Latin America was not credible. Both M.Z. and Wusirika persuasively described respondent as having been "all over" M.Z. Respondent's testimony that he never asked M.Z. out on a date was also not credible. His Facebook message to M.Z. stating, "When r we going for dinner to celebrate?" after he matched with the USC cardiology fellowship program was just such a request. Respondent's claim that he was just referring to a group dinner to celebrate the results of the fellowship match was not believable. These aspects of respondent's testimony lessened his own credibility.

76. Respondent argues that it does not make sense that M.Z. would have sought out respondent personally to discuss a patient when she could have more easily paged him or called the "VOIP" phone in the unit, which was much more common. Respondent also questions why M.Z. would have gone into the call room with respondent if the incident at the Rockwell was so troubling to M.Z. But in-person discussions about patients were not unheard of, and it was respondent's idea to go into the call room, not M.Z.'s.

77. Respondent also suggests he could not have held M.Z.'s upper arms as she described due to the decreased strength and dexterity in his left arm and hand. But M.Z. did not testify that respondent used a great deal of force, and the decreased strength and dexterity did not prevent respondent from using his left arm and hand entirely. In addition, respondent notes the call room was on a busy hallway, could not be locked from the inside, and that every fellow had a key to unlock it. Respondent questions why he would risk assaulting M.Z. when someone could have heard or interrupted the assault, and why M.Z. did not shout for help or bite respondent's tongue when he allegedly put it in her mouth. But the encounter was not long or loud, and Mechanic persuasively testified that victims of known attackers often do not attempt strenuous or violent resistance.

78. Therefore, none of these arguments significantly undermines M.Z.'s account of the assault. In comparison, respondent's innocuous account of the call room incident is unlikely, given M.Z.'s immediate disclosure of the assault of Tomassetti and subsequent actions. It is not believable that M.Z. would completely fabricate a midday sexual assault at the hospital just because respondent said USC was not a good cardiology fellowship match for her. Respondent's denial of any attraction to M.Z. also lacked credibility, and the risk to his reputation and career was a

significant motive for him to deny the assault. Viewing the totality of the circumstances and carefully considering all of the relevant evidence, there is a high probability that M.Z.'s account of respondent's sexual assault in the call room is true.

ALLEGATIONS CONCERNING C.G.

79. Complainant alleges respondent sexually assaulted C.G. at his apartment on the day she came over to go swimming in January 2015. C.G. testified she became very intoxicated and woke up from unconsciousness to find respondent on top of her with his penis in her vagina. Respondent testified C.G. did not seem intoxicated and consented to sexual intercourse.

80. The evidence was clear that C.G. became very intoxicated, but was less clear about how she was acting while she was intoxicated. C.G. has no memory of events between being in the Jacuzzi with respondent and waking up in his bed, and thus was unable to describe how she was acting during that time. Respondent testified C.G. did not seem intoxicated at the Jacuzzi and on the long walk back to his apartment. Complainant presented no evidence from any other source as to how C.G. was acting during that time.

81. With regard to what happened in respondent's bedroom, C.G. testified she woke up from unconsciousness during sexual intercourse. But it is unclear if she woke up from being passed out or just cannot remember what happened while acting as if she were conscious. Respondent testified C.G. was not unconscious, and gave a detailed account of them kissing and showering and of C.G. trying to perform oral sex on him, telling him to perform oral sex on her, and speaking to him during and after the encounter. Respondent also testified that after having sex with C.G., he crudely told her in Spanish that he did not want a romantic relationship with her because she

was a whore, a statement that is both hard to believe he made and hard to believe he made up. C.G.'s own recollection of the encounter is incomplete and impaired by intoxication, and does not constitute clear and convincing evidence that respondent's account is false.

82. C.G. had experienced blackouts before from alcohol consumption, but testified she had not heard any reports that she acted as if she had blacked out on those occasions. Respondent was unaware of those blackout episodes, and C.G. had never blacked out before around him. In addition, the amount of alcohol C.G. consumed would not ordinarily be expected to cause a person to become very intoxicated. C.G. testified she had just two drinks over the course of the afternoon, and no other evidence suggested she had more. Like respondent's testimony, this evidence calls into question whether respondent knew or should have known C.G. was intoxicated to the point of unconsciousness or lacked capacity to consent to sexual intercourse.

83. C.G. immediately told her friend Rogoff that respondent sexually assaulted her, which lends support to C.G.'s account. But later, C.G. told Tomassetti that nothing happened with respondent; still later, C.G. spoke to M.Z. about it and reported the assault to the police. The denial to Tomassetti does not establish that C.G.'s account is false; C.G. may have wanted to keep what happened private. But it was an inconsistent statement that is a factor in evaluating complainant's overall evidence of the alleged assault.

84. Considering all of the above, complainant did not prove by clear and convincing evidence that respondent sexually assaulted C.G. The evidence presented left substantial doubt as to whether he did.

ALLEGATIONS CONCERNING A.S.

85. Complainant alleges respondent sexually assaulted A.S. after the pharmaceutical dinner, when she went over to his apartment to watch the soccer game, and in her hotel room during the Chicago trip. According to A.S., respondent raped her at his apartment after the pharmaceutical dinner; according to respondent, they tried to have consensual sex but he could not get an erection because he was intoxicated. A.S. and respondent exchanged text messages the morning after the incident, and the exchange was just about how tired they both were. Her text messages to respondent before the dinner were also flirtatious, stating that she may want respondent to drink more wine so she could "tak[e] advantage of this strong friendship." While these text exchanges do not disprove A.S.'s account, they are more consistent with respondent's testimony about what happened than her own.

86. Regarding the soccer game viewing, the testimony of Ocampo and Gomez undermined A.S.'s account that respondent dragged her into his bedroom and raped her. Both Ocampo and Gomez testified A.S. went to the bedroom willingly and came out to say goodbye with no signs of distress. Although Ocampo and Gomez are respondent's friends, their testimony was consistent and believable. This supported respondent's account that his sexual encounter with A.S. was consensual. After the soccer game viewing, A.S. also texted respondent pictures of the evening and about how much she would miss him when he left for UCLA, expressing ideas for a romantic relationship.

87. Regarding the Chicago trip, A.S. testified respondent raped her in her hotel room, while respondent testified they had consensual sex. Both of them agree they had sexual intercourse again later that morning, and A.S. testified she had no objections to that second encounter. Their texts indicate A.S. invited respondent to her

hotel room that morning, and both of them testified that they spent most of the day together after leaving the hotel room. The next day, A.S. became angry about respondent messaging another woman, and their relationship deteriorated.

88. This evidence leaves substantial doubt as to whether respondent sexually assaulted A.S. in her hotel room. The texts and A.S.'s behavior after the claimed assault support respondent's account of the encounter as consensual. A.S. and respondent had another sexual encounter that A.S. viewed as consensual immediately after the claimed assault. Their behavior for the remainder of the day suggests that nothing was amiss, at least until the following day when A.S. became angry about respondent messaging another woman. These facts lend more credence to respondent's account than to A.S.'s account.

89. Therefore, complainant did not prove by clear and convincing evidence that respondent sexually assaulted A.S. as alleged. Considering all of the relevant evidence, it is not clear that their sexual encounters were nonconsensual.

LEGAL CONCLUSIONS

General Legal Standards

1. "The board shall take action against any licensee who is charged with unprofessional conduct." (Bus. & Prof. Code, § 2234.)[2] "[U]nprofessional 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

[2] Undesignated statutory references are to the Business and Professions Code.

any provision of this chapter. [¶] (b) Gross negligence. [¶] (c) Repeated negligent acts. . . . [¶] (d) Incompetence. [¶] (e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon. [¶] (f) Any action or conduct that would have warranted the denial of a certificate. [¶] (g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. . . ." (*Ibid.*)

2. "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 . . . and who is found guilty, . . . may, in accordance with the provisions of this chapter: [¶] (1) Have his or her license revoked . . . [¶] (2) Have his or her right to practice suspended for a period not to exceed one year . . . . [¶] (3) Be placed on probation and be required to pay the costs of probation monitoring . . . . [¶] (4) Be publicly reprimanded . . . . [¶] (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper." (§ 2227, subd. (a).)

3. Complainant bears the burden of proving the alleged grounds for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence "requires a finding of high probability," and has been described as "requiring that the evidence be '"so clear as to leave no substantial doubt"; "sufficiently strong to command the unhesitating assent of every reasonable mind."' [Citation.]" (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.) "Evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. [Citations.] The evidence need not establish the fact beyond a reasonable doubt." (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1090.)

Discussion

FIRST CAUSE FOR DISCIPLINE – GROSS NEGLIGENCE

4. The First Cause for Discipline alleges respondent is subject to disciplinary action for gross negligence for the charged acts of sexual assault. (See § 2234, subd. (b).) "'Gross negligence' long has been defined in California and other jurisdictions as either a 'want of even scant care' or 'an extreme departure from the ordinary standard of conduct.' [Citations.]" (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 754; *Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d 124, 138 (*Franz*); *Gore v. Board of Medical Quality Assurance* (1980) 110 Cal.App.3d 184, 195-198 (*Gore*).)

5. Relying on Fidler's testimony, complainant argues that respondent's alleged sexual assaults of coworkers were extreme departures from the ordinary standard of conduct for physicians, justifying disciplinary action for gross negligence. But the accusers were not respondent's patients, and no reported decision supports the conclusion that a physician's sexual misconduct with a non-patient can constitute gross negligence for purposes of license discipline. The reported cases involving license discipline of physicians for gross negligence involve patient care or recordkeeping, not conduct directed toward a non-patient. (See, e.g., *Franz, supra*, 31 Cal.3d at p. 141 [physician was grossly negligent in choosing hospital that could not cope with foreseeable complications of surgery on a high-risk patient]; *Glover v. Board of Medical Quality Assurance* (1991) 231 Cal.App.3d 203, 205-206 [physician was grossly negligent in repeatedly prescribing potentially lethal doses of prescribed medications to a patient who had attempted and ultimately succeeded at suicide using these medications]; *Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1053 [anesthesiologist was grossly negligent in failing to record a patient's vital

signs]; *Yellen v. Board of Medical Quality Assurance* (1985) 174 Cal.App.3d 1040, 1058 [physician's practice of injecting and prescribing patients medications that were medically inappropriate and dangerous was grossly negligent]; *Gore, supra,* 110 Cal.App.3d at p. 195 [physician was grossly negligent in the diagnosis, monitoring and treatment of a patient postoperatively].)

6. Here, the charged misconduct did not involve patient care or recordkeeping, and complainant identified no legal authority to support the proposition that gross negligence for disciplinary purposes includes such misconduct. Nothing in section 2234 suggests it does, and the relevant case authorities suggest it does not. Therefore, complainant did not prove that respondent is subject to disciplinary action for gross negligence under section 2234.

SECOND CAUSE FOR DISCIPLINE – UNPROFESSIONAL CONDUCT

7. The Second Cause for Discipline alleges respondent is subject to disciplinary action for unprofessional conduct under section 2234 for the charged acts of sexual assault. Section 2234 does not mention sexual assault, but the provision that unprofessional conduct "includes, but is not limited to" what is listed means that additional forms of conduct may be deemed unprofessional. (See *People v. Arias* (2008) 45 Cal.4th 169, 182 [it is a "general rule of statutory construction that '[u]se of the language "including, but not limited to" in the statutory definition is a phrase of enlargement rather than limitation'"]; *Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1136 (*Moustafa*) [provision in registered nursing statute that unprofessional conduct "is not limited to" the examples given means that "'[a]dditional forms of conduct may be deemed unprofessional'"].)

8. To impose discipline on a medical licensee, there must be a nexus between the professional misconduct and the physician's fitness or competence to practice medicine. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 769 (*Griffiths*).) Conduct may be substantially related to a physician's fitness even though the conduct does not relate to the skills needed for the practice of medicine. (See, e.g., *Krain v. Medical Board* (1999) 71 Cal.App.4th 1416, 1424–1425 [physician's criminal conviction for solicitation of subornation of perjury was substantially related to his qualifications as a physician]; *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 469-470 [criminal conviction for tax evasion was substantially related to a physician's fitness to practice].) Whether the conduct at issue in this case qualifies as unprofessional conduct turns on whether the conduct sufficiently established respondent's unfitness to be a physician. (*Moustafa, supra*, 29 Cal.App.5th at p. 1139; *Griffiths, supra*, 96 Cal.App.4th at p. 769.)

9. During the hearing, respondent stipulated that if any of the sexual assault allegations were true, such conduct would amount to unprofessional conduct that was cause for disciplinary action. Complainant did not prove by clear and convincing evidence that respondent sexually assaulted C.G. or A.S. (Factual Findings 79-89), but did prove by clear and convincing evidence that respondent sexually assaulted M.Z. (Factual Findings 69-78.) Clear and convincing evidence requires a finding of high probability (*In re Angelia P.*, supra, 28 Cal.3d at p. 919), and the evidence established a high probability that M.Z.'s account of respondent's sexual assault against her in the call room is true. (Factual Findings 69-78.)

10. Respondent is subject to disciplinary action under section 2234 for this proven act of sexual assault. There is a manifest nexus between respondent's workplace sexual assault of a physician coworker and his fitness to be a physician.

Furthermore, respondent's sexual assault of M.Z. sufficiently established his unfitness to be a physician so as to qualify as unprofessional conduct under section 2234. Therefore, there is cause to discipline respondent's license as alleged in the Second Cause for Discipline.

LEVEL OF DISCIPLINE

11. With the evidence establishing one of the alleged causes for discipline, the Board has discretion to determine the suitable discipline, "subject to the Legislative mandate that the Board's highest priority be protection of the public; and, secondarily, discipline should 'aid in the rehabilitation of the licensee.' (§ 2229, subds. (a) & (b).)" (*Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448.) In exercising its discretion, the Board considers the Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition/2016) (Guidelines) that it has adopted. (Cal. Code Regs., tit. 16, § 1361, subd. (a).) For general unprofessional conduct, the minimum level of discipline is a stayed revocation with five years' probation, and the maximum level of discipline is revocation. (Guidelines, p. 24.)

12. Respondent's unprofessional conduct in this case was the sexual assault of a physician coworker. The assault occurred in the workplace and violated professional, personal, and workplace boundaries. Respondent's violation of those boundaries raises significant concerns about his judgment, impulse control, and respect for the rights of others. As an assault in the workplace on a fellow physician, respondent's conduct also had the potential to disrupt patient care. His denial that he sexually assaulted M.Z. was not credible, and he presented no evidence of any mitigating circumstances or evidence of rehabilitation. The lack of rehabilitation evidence calls into question his ability to practice safely as a physician.

13. License revocation is a "drastic penalty." (*Cooper v. State Board of Medical Examiners* (1950) 35 Cal.2d 242, 252.) But with such serious misconduct and no evidence of rehabilitation, allowing respondent to continue practicing would not be protective of the public or of public confidence in the medical profession. Therefore, the proper level of discipline is revocation of respondent's license.

ORDER

Physician's and Surgeon's Certificate No. A 122415 issued to respondent Guillermo Andres Cortes is revoked.

DATE: February 5, 2020

DocuSigned by:
Thomas Heller
CFDEA01421714A4...
THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 28 20 18
BY ANALYST

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

In the Matter of the Accusation Against: Guillermo Andres Cortes, M.D. 100 UCLA Medical Plaza Suite 660 Los Angeles, CA 90024. Physician's and Surgeon's Certificate No. A 122415, Respondent.	Case No. 800-2018-041289 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation 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 9, 2012, the Medical Board issued Physician's and Surgeon's Certificate Number A 122415 to Guillermo Andres Cortes, 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 April 30, 2020, 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 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."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

6. Respondent Guillermo Andres Cortes, M.D. is subject to disciplinary action under section 2234, subdivision (b), in that he sexually assaulted three different women with whom he worked at the University of Southern California (USC). The circumstances are as follows:

Allegations Regarding Victim #1:

A. Victim #1 is a second-year fellow in the Cardiology training program at USC. She attended medical school at USC and graduated with her medical degree in 2013. From June 2013 to June 2016, she was an Internal Medicine resident at Keck Medicine of USC. In December 2015 she was matched with USC Keck Cardiology Fellowship.

B. In November 2015, Respondent was a second-year Interventional Cardiology Fellow at USC Keck. He was in a supervisory position to Victim #1 and oftentimes her direct supervisor. She was a third-year resident in the Department of Internal Medicine.

C. On or about November 17, 2015, Victim #1 was working on the Nephrology Consult Service and needed to discuss a patient with Respondent. He was in the Progressive Care Unit and she went to talk to him. Respondent led her to the Cardiology Fellow Call Room.

D. This particular call room is small, it has no windows, but has a twin bed and a small desk with a computer. They met in that room to discuss the patient, but when Victim #1 tried to leave the room, Respondent blocked her exit and put his hand on the door so she could not get out. He placed his hand on her buttock but she told him to stop

and could not believe he was doing this. He grabbed her arms, leaned into her and forced his tongue into her mouth. She tried to get free and repeatedly told him to stop but he ignored her. Victim #1 was trying to duck but could not get away.

E. Respondent then untied her scrub pants and forced his hand down into her underwear and inserted his finger into her vagina; she did not give him permission or consent to do so. Victim #1 had to ask him two times to remove his hand and he refused to do so. He moved his finger back and forth and she could not believe this was happening. He continued to force his tongue into her mouth. Victim #1 was begging him to stop. After what seemed like several minutes of struggling with him, Respondent unblocked her path and she ran out of the room.

F. Victim #1 did not scream because Respondent is physically so much bigger than she is, and she was afraid he would hurt her even more. She was afraid for her safety.

G. Victim #1 immediately texted her friend, Dr. T., and asked if she could come talk to her. Victim #1 told Dr. T. about the incident and Dr. T. told her to report it but Victim #1 was afraid of retaliation.

H. On approximately November 18, 2015, Victim #1 talked to Respondent on the phone and told him never to touch her again and that when she told him to stop, he should have listened to her. On November 18, 2015, Respondent paged her and claimed he felt bad and said, "please don't tell anyone… I have worked very hard to get here, please don't tell anyone." Victim #1 did not respond.

I. In February 2016, victim #1 met with Dr. E.H., who, at the time, was the Internal Medicine Residency Program Director at USC Keck. She reported the sexual assault to him. She asked him not to schedule her with Respondent unless it was an emergency situation. Victim #1 wanted to make sure she was safe. Unfortunately, her request was ignored and there were two occasions when she was forced to work with Respondent.

J. Sometime in February 2016, Respondent was placed on leave.

K. In February 2016, victim #1 spoke with Dr. S. (Director of the General Cardiovascular Fellowship Training Program at USC) to report the sexual assault but he did not want to hear about it. During one of their calls he said "you knew what you were doing," and "now I have to tell all the fellows about it."

Allegations regarding Victim #2:

L. Victim #2 is a physician, licensed in California in 2016. She was doing her internal residency at County USC Hospital when she met Respondent, sometime in the fall of 2014. She and Respondent never dated, and Victim #2 made it very clear to him that she just wanted to be friends. She thought Respondent understood, but was not sure it was mutual.

M. In January 2015, Respondent and Victim #2 made plans to get together to go swim at Respondent's pool. Victim #2 had plans later that night to go out to dinner with her friend Mr. G., so she just planned on going to Respondent's place for a few hours.

N. When Victim #2 arrived at Respondent's apartment, he made them margaritas, then they went down to the pool to swim. When Victim #2 and Respondent came back up to his apartment awhile later, Respondent made them two more drinks and emptied the bottle of tequila. When they went back down to the pool, he tried to kiss Victim #2 who pushed him away.

O. Victim #2 became very intoxicated. When Victim #2 and Respondent returned to his apartment, Victim #2 awoke to Respondent being on top of her. Her bikini top was on but her bikini bottoms and shorts were off, and Respondent's penis was inside of her. Respondent penetrated Victim #2, without her consent.

P. Respondent got up to use the restroom and it was Victim #2's chance to escape. Victim #2 got dressed quickly and ran out of Respondent's apartment. Respondent caught up with Victim #2 in the hallway, they got into the elevator, and once Respondent got in, Victim #2 got out and ran down the stairwell. Victim #2 ran into the street and was walking towards an underpass which had a lot of homeless people

and Victim #2 was fearful to walk through it. Respondent caught up with Victim #2, driving in his car next to her. Victim #2 thought it would be safer to get in the car with Respondent rather than walk under the underpass. Respondent dropped Victim #2 off at her apartment. Victim #2 yelled at Respondent that she never wanted to have sexual intercourse. Victim #2 slammed the car door and ran into her apartment.

Q. Victim #2 was supposed to meet her friend Mr. G. for dinner, and when she arrived home she saw that he had called her several times. Victim #2 called Mr. G. crying hysterically and told him what happened.

R. Since the January 2015 incident, Victim #2 has only spoken to Respondent a few times. Victim #2 reported the incident to the police.

Allegations Regarding Victim #3:

S. Victim #3 is currently in the second year of her Cardiology Fellowship at USC Keck.

T. Victim #3 first met Respondent when she started her fellowship in the summer of 2016. Victim #3 was a first year fellow and Respondent was in his third year of the fellowship. First year fellows are mentored and supervised by third year fellows in the program. Respondent served in a supervisory role over Victim #3.

U. Respondent is also the half-brother of Dr. L.C. Dr. L.C. is the Interventional Cardiology Program Director at USC. This is a position of significant authority and influence at USC and in the Cardiology program in particular.

V. When Victim #3 first got to USC, she noticed certain cliques existed with the other fellows. Victim #3 did not feel welcome and felt like an outsider. Respondent was personable and befriended her. Victim #3 felt comfortable with Respondent especially because they both spoke Spanish. Respondent would tell Victim #3 that people were talking about her behind her back and this further alienated Victim #3 from her peers.

W. Early in the program, Victim #3 started to trust in Respondent. Victim #3 thought of Respondent as the only person who was her ally during her fellowship. In or about September or October 2016, Victim #3 learned that she had passed her boards for internal medicine and Respondent suggested they have drinks to celebrate. Victim #3

invited him to her apartment one evening. Over drinks Respondent told Victim #3 that he found her attractive and wanted to be "friends with benefits." Victim #3 told him that she was not interested in being "friends with benefits." Out of the blue, Respondent unzipped her dress and started fondling her breasts and putting his hands on her underwear. Victim #3 was shocked and asked what he was doing. Victim #3 told him that she was not interested, pulled away and zipped her dress back up. Respondent again told Victim #3 that she was attractive and implied that he would not take no for an answer.

X. For Victim #3's birthday in October 2016, a group of people, including Respondent and Victim #3, went to an Octoberfest Party to celebrate. There were hundreds of people from all over the world at the party and Victim #3 was enjoying socializing. Respondent got upset that she was talking to other men, so he squeezed Victim #3's fingers and almost broke them.

Y. Later that month, many of the fellows including Respondent and Victim #3 attended a pharmaceutical dinner. There was a lot of alcohol being served and Victim #3 became intoxicated. Victim #3 could barely stand on her feet and some of the other fellows put her in the car with Respondent and told him to take Victim #3 home. Respondent took Victim #3 to his apartment, and from midnight until about 5:00 in the morning, Victim #3 was vomiting in Respondent's bathroom. Victim #3 went to lay down in Respondent's bed with her blazer and pants on. Respondent got on top of Victim #3, pulled her pants off without her consent, forced himself on her, and started penetrating her vagina with his penis. This was all against Victim #3's will. Victim #3 told Respondent to stop multiple times both in English and Spanish but he would not. Finally, Victim #3 told Respondent that she was going to vomit on him and he stopped. For the first time in her life Victim #3 felt violated; she relayed this to her younger sister.

Z. Later at the hospital, Victim #3 confronted Respondent about the sexual assault on her and Respondent replied "that doesn't count" in Spanish. Respondent also said "no one

comes to my bed with their pants on." Victim #3 had never had a man do this to her. She was in shock and blocked it out of her head.

AA. In about April 2017, a group of people, including Respondent and Victim #3 were watching a soccer game at his apartment. At some point during the evening, Respondent and Victim #3 started kissing and he began forcing her to enter his bedroom. Victim #3 told him to stop and that she was not interested in having sex with him. Respondent grabbed her and pulled her to the bedroom. Victim #3 started crying and told him that she didn't want this. Respondent ignored her and forced himself on Victim #3 while she continued to cry and told him she was not interested in sex like this. Victim #3 pleaded with Respondent to stop but he did not.

BB. In mid-May 2017, Victim #3 was in Chicago for a medical conference. Respondent arrived at the conference one morning at around 9:00 a.m. as he had taken a red-eye flight. As Victim #3 was getting ready to leave for the conference, he asked if he could sleep at her place as his room was not ready. He came into the room, undressed himself and went to bed. While victim #3 was finishing her makeup, he made comments about her breasts. Victim #3 told Respondent in Spanish to stop but he did not. Respondent got a hold of Victim #3, put her hands over her head, pinned her to the bed, and raped her. Respondent kept pushing his penis inside of her angrily while staring into space. Victim #3 felt like a battered woman who keeps getting violated. She was stunned and humiliated.

CC. The next day, Victim #3 confronted Respondent and told him it was not okay what he was doing to her. Victim #3 asked him why he kept doing this to her and he said because "We like it." Victim #3 said "No, I don't like it." Later, at a conference dinner, as Victim #3 was sitting next to Respondent, she saw photos and texts of women on his phone and she said "are you going to have sex with them and treat them like trash later?" He said he would not have sex with them because he respected them and he wants to date them. Respondent got up and walked out of the dinner. The next

day, Victim #3 confronted Respondent again and told him he had forced himself on her and she felt so violated.

DD. Victim #3 was so distraught that she could no longer attend the conference. Victim #3 called one of her best friends from medical school, Dr. R., who lives in Chicago. Victim #3 went to stay with her and told her about the sexual assaults and Dr. R. told Victim #3 that she needed to call the police. Dr. R. had never seen Victim #3 so distraught.

EE. Victim #3 managed to get to the airport in Chicago but felt so broken that she contacted an online counseling service. When she arrived in Los Angeles, she called the Chicago Police Department and they put her in contact with a detective who told her to call the LAPD. Victim #3 contacted the LA Rape Hotline and told them what happened.

FF. Victim #3 then learned that Respondent had also sexually assaulted another cardiology fellow. Victim #3 was in disbelief to learn that USC had known about her complaints against Respondent and had allowed him to continue supervising other fellows and working at the Hospital.

GG. This whole experience has left Victim #3 betrayed and degraded. She has felt violated on so many different levels.

Allegations of Gross Negligence:

HH. Respondent engaged in multiple instances of sexual assault and intimidation.

II. Respondent's behavior of sexual assault, inappropriate touching, and unwanted physical contact constituted behavior that undermined a culture of safety.

JJ. Respondent's disruptive behavior renders him unsafe to practice medicine and threatens the health and safety of patients.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

7. Respondent Guillermo Andres Cortes, M.D. is subject to disciplinary action under section 2234 in that he sexually assaulted three of his colleagues. The circumstances are as follows:

A. Complainant incorporates by reference the allegations contained above in paragraph 6, A-JJ, as though fully set forth herein.

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 122415, issued to Guillermo Andres Cortes, M.D.;

2. Revoking, suspending or denying approval of Guillermo Andres Cortes, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Guillermo Andres Cortes, 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: June 28, 2018

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

LA2018501189